

No. 91-835

Supreme Court, U.S.

FILED

SEP 9 1991

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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1991

RICHARD CALDER, Petitioner

v.

RETA JOB, Respondent

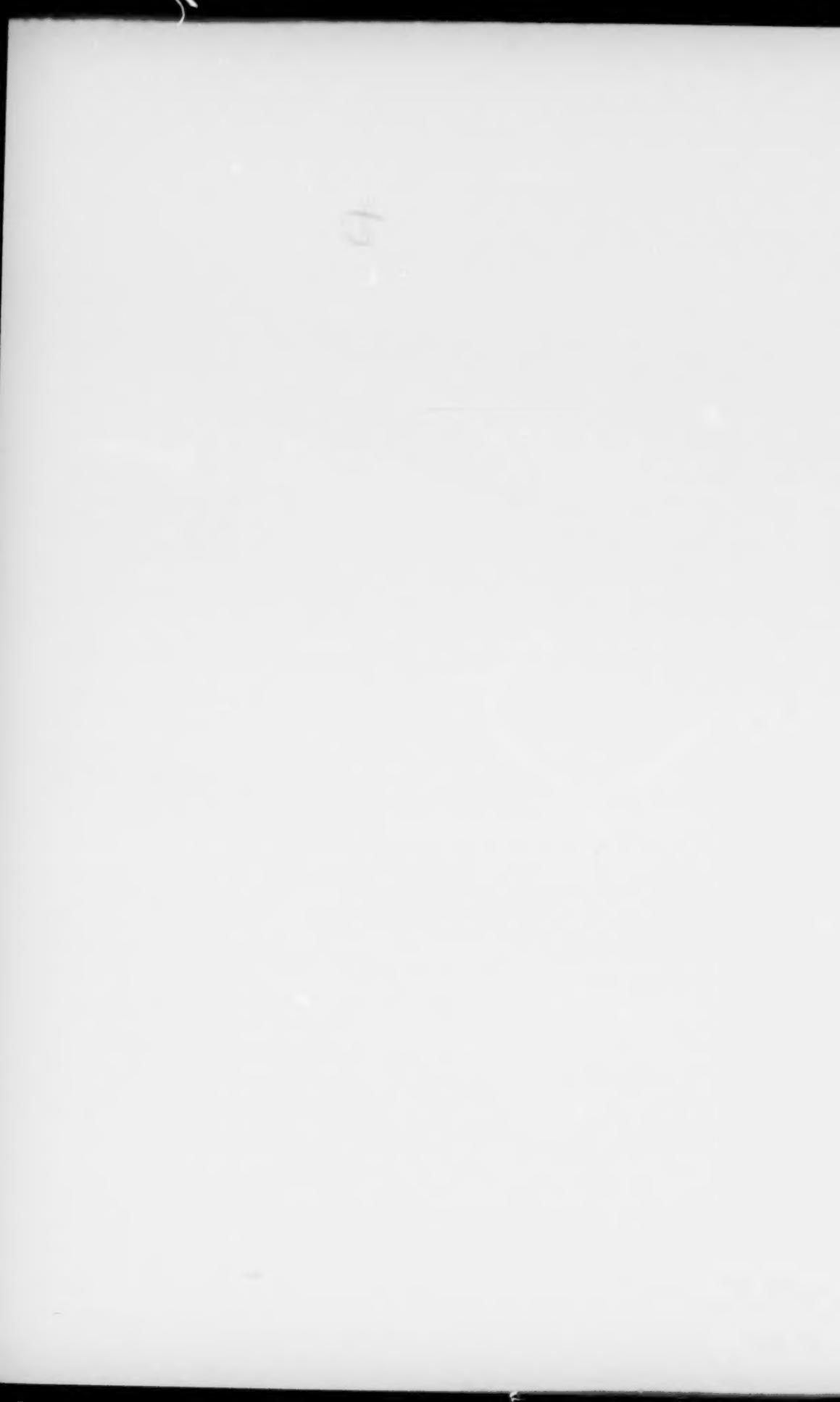
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF UTAH

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Pursuant to Title 28 U.S.C. Section 1334, did the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, have subject matter jurisdiction in Case No. 84-5436 to render a judgment in the amount of \$54,564.00 on February 24, 1986, regarding a pre-petition claim of a creditor, Reta Job, against a debtor, Richard Calder, who at the time of the judgment was in a Chapter 13 proceeding, Case No. 84A-00492, which case had been filed approximately two years prior on February 23, 1984, in the United States Bankruptcy Court for the District of Utah?

LIST OF ALL PARTIES

All parties appear in the caption of the
case.

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CITATIONS TO OPINIONS BELOW

Judgment of Judge J. Dennis Frederick in Civil No. C-84-5436 on February 24, 1986, in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah. Appendix C, Page C-1.

Order of Judge J. Dennis Frederick in Civil No. C-84-5436 on March 4, 1991, in Civil No. C-84-5436, in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, which was appealed to the Supreme Court of the State of Utah. Appendix B, Page B-1.

Order of the Supreme Court of the State of Utah on June 13, 1991, in No. 910137 840905436CV, denying motion to reverse because of manifest error. Appendix A, Page A-1.

STATEMENT OF JURISDICTIONAL GROUNDS

Rule of entry of judgment or decree
sought to be reviewed. A denial on June 13, 1991, by the Supreme Court of the State of Utah, of a motion for summary disposition by petitioner.

Statutory provision conferring jurisdiction on this Court. 28 U.S.C. Section 1257 and Rule 10.1(b) and 10.1(c) of the Rules of the Supreme Court of the United States.

STATUTES INVOLVED IN THE CASE

Title 28 U.S.C. Section 1334. Bankruptcy cases and proceedings.

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under Title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under Title 11.

(c) (1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising

under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceedings if an action is commenced and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(d) The district court in which a case under title 11 is commenced or is pending

shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

Title 28 U.S.C. Section 157. See Appendix D, Page D-1.

STATEMENT OF THE CASE

1. On February 23, 1984, Richard Calder filed a Chapter 13 bankruptcy, Case No. 84A-00492, in the United States Bankruptcy Court for the District of Utah. Appendix E, Page E-1.

2. This case was in force from its filing on February 23, 1984, until dismissal on August 13, 1986. Appendix E, Page E-1.

3. On October 13, 1983, Dennis and Reta Job filed a Chapter 7 bankruptcy, Case No. 83C-02769, in the United States Bankruptcy Court for the District of Utah.

4. Richard Calder was the attorney of record for the Jobs in this Chapter 7.

5. Calder allegedly committed professional legal malpractice in the period from October 13, 1983 to January 9, 1984, in the

performance of his legal duties pertaining to this Chapter 7 of the Jobs.

6. As of February 23, 1984, the filing date of Calder's Chapter 13, the Jobs had a state law claim against Calder because of alleged professional legal malpractice committed in handling the Job Chapter 7.

7. As of February 23, 1984, the Job claim was an unliquidated, disputed claim against Calder.

8. Calder, at the time of filing his Chapter 13 on February 23, 1984, did not have any knowledge of the Job claim for professional malpractice. The Jobs also did not have knowledge as of February 23, 1984, of the existence of their claim against Calder.

9. The Jobs, in the Fall of 1984, long after the inception of the Calder Chapter 13, filed a suit against Calder in the Third Judicial District Court in and for Salt Lake County, State of Utah. In January 1986, after a one-day bench trial, the Jobs obtained a judgment in the amount of \$54,564.00

for professional legal malpractice against Calder. Appendix C, Page C-1.

10. The Jobs were not aware of the Chapter 13 filing of Calder until sometime in February 1986, shortly prior to the entry of the State court judgment against Calder.

11. Judge J. Dennis Frederick of the Third Judicial Court of Salt Lake County, State of Utah, who rendered the judgment was notified in writing on February 5, 1986, of the pendancy of the Calder Chapter 13 after the trial and approximately three weeks prior to entry of the judgment.

12. The notice stated that the alleged acts complained of by the Plaintiff arose prior to February 23, 1984. Appendix F, Page F-1.

13. Judge Frederick, although on notice of the bankruptcy, chose to ignore the Calder Chapter 13 and signed the judgment.

14. The Jobs, on May 5, 1987, filed a proof of claim in the amount of \$54,543.90 in the Calder Chapter 13 case. Appendix G, Page G-1.

15. Calder's belated notice of his pending Chapter 13 to the Jobs and Judge Frederick after the claim had been litigated in the State court was because Calder had at first when the Job suit was filed erroneously thought the Job claim arose post-petition, but later correctly realized the Job claim arose prior to February 23, 1984, the date of the filing of the Calder Chapter 13.

16. The judgment entered on February 24, 1986, created a judicial lien on all real property of Richard Calder located in Salt Lake County, pursuant to U.C.A. 78-22-1.

STAGE IN PROCEEDING IN WHICH FEDERAL QUESTION OF JURISDICTION WAS RAISED

The Federal question that the State district court lacked jurisdiction was first raised on January 22, 1991, by way of motion and supporting memorandum. Appendix I, Page I-1.

ARGUMENT

I. THERE ARE IMPORTANT AND SPECIAL REASONS FOR THE SUPREME COURT OF THE UNITED STATES TO EXERCISE JUDICIAL DISCRETION FOR GRANTING A PETITION FOR A WRIT OF CERTIORARI IN THIS MATTER.

The Federal question involved is the scope of jurisdiction pursuant to Title 28 U.S.C. Section 1334 of the Bankruptcy Court over a pre-petition claim against a debtor such as Calder who is in a pending Chapter 13 case in which there has not been any abstention action taken pursuant to Title 28 U.S.C. Section 1334(c)(1) or Section 1334(c)(2).

In such a fact pattern, does the state court have, as to a pre-petition bankruptcy claim, concurrent jurisdiction with the jurisdiction of the United States District Court or did the State court clearly lack any subject matter jurisdiction over such a pre-petition bankruptcy claim?

The Bankruptcy Reform Act of 1978 which was the culmination of years of extensive study was enacted precisely in order to resolve such a jurisdictional dispute.

The Bankruptcy Reform Act of 1978 directly conflicts with the June 13, 1991 decision of the Utah Supreme Court.

The decision of the Supreme Court of the

State of Utah decided this Federal jurisdictional question in a way that conflicts with the following decisions of the Supreme Court of the United States:

Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50, 105 S.Ct. 2858, 73 L.Ed.2d 598 (1982).

Granfinanciera S.A. v. Nordberg, --- U.S. ---, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989).

Katchen v. Landry, 382 U.S. 323, 15 L.Ed.2d 391, 88 S.Ct. 467 (1966).

Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940).

Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939).

Galloway v. Benton, 336 U.S. 132, 69 S.Ct. 435, 93 L.Ed. 553 (1949).

United States Fidelity and Guaranty Co. v. Bray, 225 U.S. 205, 56 L.Ed. 1055, 32 S.Ct. 620 (1912).

In re Watts and Sachs, 190 U.S. 1, 40 L.Ed. 933, 23 S.Ct. 718 (1902).

The decision of the Supreme Court of the State of Utah decided this Federal jurisdictional question in a way that conflicts with twenty-nine cases in nine different United States court of appeals. The state court of last resort in Utah is in conflict

with the following United States Court of Appeals:

Second Circuit Court of Appeals:

In re Ben Cooper, Inc., 896 F.2d 1394 (2nd Cir. 1990).

In re Brown, 734 F.2d 119 (2nd Cir. 1984).

In re Manville Forest Products Corp., 896 F.2d 1384 (2nd Cir. 1990).

Third Circuit Court of Appeals:

Begley v. Philadelphia Elec. Co., 780 F.2d 46 (3rd Cir. 1989).

In re Bobroff, 766 F.2d 797 (3rd Cir. 1985).

In re Meyertech, 831 F.2d 410 (3rd Cir. 1987).

Pacor, Inc. v. Higgins, 743 F.2d 984 (3rd Cir. 1984).

Fourth Circuit Court of Appeals:

Nationwide Mut. Fire Ins. Co. v. Eason, 736 F.2d 130 (4th Cir. 1984).

In re A.H. Robins Co., 788 F.2d 994 (4th Cir. 1985) cert. denied, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986).

Fifth Circuit Court of Appeals:

Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986).

Matter of Majestic Energy Corp., 835 F.2d 87 (5th Cir. 1988).

In re Modern Boats, 775 F.2d 619 (5th Cir. 1985).

State of Tex. v. Wellington Resources Corp., 706 F.2d 533 (5th Cir. 1983).

In re Wood, 825 F.2d 90 (5th Cir. 1987).

In re Dogpatch, U.S.A., Inc., 810 F.2d 782 (5th Cir. 1987).

Sixth Circuit Court of Appeals:

Robinson v. Michigan Consol. Gas Co., Inc., 918 F.2d 579 (6th Cir. 1990).

In re Salem Mortgage Co., 783 F.2d 626 (6th Cir. 1986).

Seventh Circuit Court of Appeals:

Diamond Mortg. Corp. of Illinois v. Sugar, 913 F.2d 1233 (7th Cir. 1990).

Home Ins. Co. v. Cooper and Cooper, Ltd., 889 F.2d 746 (7th Cir. 1989).

Matter of Xonics, Inc., 813 F.2d 127 (7th Cir. 1987).

Eighth Circuit Court of Appeals:

National City Bank v. Coopers and Lybrand, 802 F.2d 990 (8th Cir. 1986).

State of Mo. v. U.S. Bankruptcy Court, etc., 647 F.2d 768 (8th Cir. 1981).

Ninth Circuit Court of Appeals:

In re Fietz, 852 F.2d 455 (9th Cir. 1988).

Wilson v. Bill Barry Enterprises, Inc., 822 F.2d 859 (9th Cir. 1987).

Kiaohoni Ohana, Ltd., Inc. v. Sutherland, 873 F.2d 1302 (9th Cir. 1989).

Tenth Circuit Court of Appeals:

Matter of Colorado Energy Supply, Inc.,
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Delgado Oil Co., Inc. v. Torres, 785 F.2d
857 (10th Cir. 1986).

In re Gardner, 913 F.2d 1515 (10th Cir.
1990).

The integrity of the Bankruptcy Code, the integrity, consistency and sovereignty of the Federal judicial system itself on this all-important jurisdictional question demand that this unarticulated aberration from well-settled federal bankruptcy jurisdictional law be corrected. The ultimate power to so correct such an aberration of the highest state court resides exclusively and necessarily in the Supreme Court of the United States.

II. HISTORICAL BACKGROUND OF BANKRUPTCY JURISDICTION

The Bankruptcy Reform Act of 1978 was enacted on November 2, 1978, and became effective on October 1, 1979. The 1978 Reform legislation, which is the jurisdictional basis of the present Code, enacted sweeping changes. This reform legislation restructured the judicial system to correct and overcome

the shortcomings which were uniformly found to have pervaded the earlier system under the 1898 Bankruptcy Act.

Collier on Bankruptcy, the leading treatise on Bankruptcy Law, states at Vol. I, Paragraph 1.03 at p. 1-10, that:

Finally, in recognition of the fact that the bankruptcy court is specialized (and should be, in order to affirmatively aid the functioning of the bankruptcy process); that its judges are specialists; and that economy of time and resources is desirable; the bankruptcy court was given an all-pervasive grant of jurisdiction. This "comprehensive grant of jurisdiction to the bankruptcy courts" (emphasis added) over all controversies arising out of any bankruptcy or rehabilitation case would greatly diminish the basis for litigation of jurisdictional issues which consumes so much time, money and energy of the bankruptcy system and of those involved in the administration of debtors' affairs.*

III. STATUTORY BASIS FOR BANKRUPTCY JURISDICTION

The basis for the jurisdiction of the United States District Court for the District of Utah in the 1978 Reform Act was 28 U.S.C.

*House Report, Rep. No. 939, 95th Congress, 2nd Sess. at 46.

Section 1471 which was later amended in 1984 by Public Law No. 98-353, entitled the Bankruptcy Amendments, and Federal Judgeship Act of 1984. For the jurisdictional provisions of 28 U.S.C. Section 1471 of the Reform Act, see Appendix H, Page H-1. For 28 U.S.C. Section 157, see Appendix D, Page D-1. For 28 U.S.C. Section 1334, see Page 2.

Collier on Bankruptcy at Vol. I, Paragraph 3.01, p. 3-20, discusses jurisdiction over Title 11 cases under 28 U.S.C. Section 1334(a):

Section 1334(a) is identical to superseded section 1471(a) of Title 28 added by the Bankruptcy Reform Act of 1978. 28 U.S.C. Section 1471(c) transferred to the bankruptcy courts all the jurisdiction granted the district courts by section 1471(a) and (b). A similar, although most assuredly not identical, function is performed by 28 U.S.C. Section 157(a).

It is quite apparent that "cases" under title 11 are to be distinguished from civil proceedings arising under Title 11 or civil proceedings related to or arising in title 11 cases. The former is the subject of section 1334(a) while the latter are covered by section 1334(b). Out of an abundance of caution, however, Congress inserted in section 1334(a) the introductory phrase "Except as provided in subsection (b) of this section." This phrase reinforces the concept that

the jurisdiction of the district courts over title 11 "cases" is to be original and exclusive (emphasis added), while the jurisdiction over civil proceedings arising under title 11, or arising in title 11 cases, or related to those cases, is to be original but not exclusive (emphasis added).

Collier on Bankruptcy at Vol. I, Paragraph 3.01 at P. 3-21, discusses jurisdiction over civil proceedings under 28 U.S.C. Section 1334(b):

Like Section 1334(a), Section 1334(b) is identical to its statutory predecessor, 28 U.S.C. Section 1471(b), added by now-repealed Section 241(a) of the Bankruptcy Reform Act of 1978. The primary distinction between the grants of jurisdiction of subsection, (a) and (b) is that, while the former is original and exclusive (emphasis added), the latter is original but not exclusive. This nonexclusivity of jurisdiction is a necessary corollary to the power of the district court granted in subsection (c) of section 1334, to abstain from hearing certain types of proceedings (emphasis added).

The intent of Congress was to bring all bankruptcy-related litigation as an initial matter within the umbrella of the district court.

Collier on Bankruptcy, in Vol. I, Paragraph 3.01 at P. 3-69, discusses abstention under 28 U.S.C. Section 1334(c), thus:

Section 1334(c)(1) is not unlike the philosophies that governed abstention under the 1898 Bankruptcy Act and the Bankruptcy Reform Act of 1978. Under those two statutes, a bankruptcy judge could abstain from hearing a matter, even if the court had jurisdiction over the controversy.

.....

Section 1334(c)(1) continues the philosophy that governed abstention under its predecessors. It is not mandatory; it merely gives the district court the discretion (emphasis added) to abstain if the abstention is in the interest of justice, or in the interest of comity with State courts or respect for State law.

.....

Section 1334(c)(1) gives the district court the power to abstain from hearing civil proceedings arising under title 11, or arising in or related to cases under title 11. To be contrasted is section 1334(c)(2) which is applicable only to proceedings based upon state law claims or causes of action "related to" a case under title 11 but not arising under title 11 or arising in a case under title 11. Section 1334(c)(1) thus applies to core matters as well as to related matters.

IV. RELEVANT ANALYTIC ELEMENTS IN THE QUESTION OF WHETHER THE STATE DISTRICT COURT HAD JURISDICTION TO TRY THE JOB CLAIM AGAINST CALDER.

The position of Calder is that the State District Court clearly lacked subject matter jurisdiction to have the Job claim

litigated before the state court. The Job claim, which arose pre-petition, was unliquidated and disputed as of February 23, 1984, the date Calder commenced his Chapter 13 and the date which original jurisdiction as a matter of law rested in the United States District Court for the District of Utah. This original jurisdiction as to the Job pre-petition claim remained with the Federal court from the commencement of the Calder Chapter 13 case until the Chapter 13 case was dismissed on August 13, 1986. The Federal jurisdiction was never at any time divested from its original placement in the United States District Court for the District of Utah by any abstention action brought by any party or by the court pursuant to 28 U.S.C. Section 1334(c)(1) or Section 1334(c)(2).

The remainder of the argument will address three compelling statutory reasons which clearly indicate the clear lack of any subject matter jurisdiction in the State District Court. The reasons argued track the

framework of Title 28 and if petitioner prevails on any one of the three below-stated propositions, then the State District Court clearly lacked subject matter jurisdiction.

1. The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b) was a civil proceeding arising in the Calder 1984 Chapter 13 and was therefore a core matter under 28 U.S.C. Section 157(b)(2)(B).

2. The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b) was a civil proceeding related to the Calder Chapter 13.

3. As of the commencement of the Calder Chapter 13 case on February 23, 1984, the United States District Court for the District of Utah had exclusive jurisdiction of all of the property of Calder.

V. THE JOB CLAIM AS OF FEBRUARY 23, 1984, PURSUANT TO 28 U.S.C. SECTION 1334(b) WAS A CIVIL PROCEEDING ARISING IN THE CALDER CHAPTER 13 AND WAS THEREFORE A CORE MATTER UNDER 28 U.S.C. SECTION 157(b)(2)(B).

The case of In re Meyertech Corp., 831 F.2d 410 (3rd Cir. 1987) as in the Job claim

against Calder involved a pre-petition claim against the debtor. The facts are as follows:

Southeastern Sprinkling Company was engaged in the business of designing and installing industrial sprinkler systems. Southeastern was involved in an ongoing business relationship with Meyertech Corporation, a supplier of sprinkler system equipment. This fact is similar to the instant case inasmuch as Calder was engaged as legal counsel for the Jobs for a period of approximately four months prior to Calder filing his Chapter 13 case in 1984.

Southeastern purchased Meyertech's fittings and incorporated them in sprinkler systems in a number of the construction projects. Sometime after the newly-installed systems were activated, Southeastern began receiving complaints from several contractors and owners of the projects about water damage apparently caused by leaks in the sprinkler system. Initially unable to determine the cause of the leaking, Southeastern limited its response to repair of the water damaged

ceilings according to its contractual responsibility.

Investigation of the origin of the leak revealed it to be in the area of the fittings supplied by Meyertech. Accordingly, Southeastern informed Meyertech and requested its assistance in remedying the problem. Meyertech acknowledged that the leakage was caused by the composition of the gaskets, a component of the fittings supplied, which could be corrected by replacement. Meyertech supplied Southeastern with new gaskets to remedy the problem.

Southeastern then set to the task of removing and replacing the previously-installed gaskets. Southeastern accomplished this replacement in conjunction with repairing the ceilings damaged by the leaking fittings.

On August 28, 1981, Meyertech petitioned for reorganization under Chapter 11 of the Bankruptcy Code. At the time of filing, Southeastern had a pre-petition right to payment from Meyertech in an alleged amount of \$273,627.00. This is similar to the

instant case inasmuch as at the time of the Calder filing on February 23, 1984, Job also had a pre-petition claim against Calder although the exact amount was not liquidated and would be disputed but unlike in Meyertech, neither Job nor Calder were at the time of Calder's filing on February 23, 1984, aware of the disputed claim.

Southeastern filed a proof of claim in the Meyertech Chapter 11 shortly after the filing date in the amount of \$273,627.00. Job filed a proof of claim in the Calder Chapter 13 case in the amount of \$54,543.90, claiming that he had a right to payment from Calder as of the commencement of the Chapter 13 in the amount of \$54,543.90. Job's claim, like Southeastern's, proof of claim, was filed sometime after Calder filed his Chapter 13 on February 23, 1984.

Meyertech, as did Calder, disputed the claim and filed an objection to the proof of claim, denying owing any obligation to Southeastern. In Meyertech, there was a stipulated settlement but this was later followed

by an adversary action in the bankruptcy court in which Southeastern sued Meyertech on breach of implied warranty of merchantability. Meyertech claimed an offset of \$43,032.32. The net result of the suit was a judgment of \$31,119.82 in favor of Meyertech, the debtor.

Southeastern appealed to the District Court urging vacation of the award to Meyertech claiming the matter was not a core proceeding as defined by 28 U.S.C. Section 157(b). The creditor, Southeastern, requested the District Court to render additional findings of fact consistent with its de novo power of review of non-core matters.

The District Court denied the request for de novo review and affirmed the bankruptcy court's finding that the issue was core.

The issue on appeal to the Third Circuit Court of Appeals was whether the action tried in the bankruptcy court was core or was not core. The Third Circuit Court of Appeals affirmed the finding of the District Court that the matter was core and stated:

A review of the history of the jurisdiction of the bankruptcy court assists in the resolution of what is or is not a core proceeding. With the passage of the Bankruptcy Reform Act of 1978, Congress vested the district courts with original and exclusive jurisdiction of all cases under title 11. 28 U.S.C. Section 1471 (repealed). The district court also had "original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." Section 1471(b) (repealed). Section 1471(c) (repealed) then conferred the bankruptcy court within the district where the title 11 case commenced with all of the jurisdiction granted to the district court by Section 1471.

Id. at 415.

.....

Section 157(b)(2) provides a non-exhaustive list of core proceedings, namely (1) all matters concerning the administration of the bankruptcy estate, (2) allowance or disallowance of claims against the estate, (3) counterclaims by the estate against persons filing claims against the estate, and (4) other provisions affecting liquidation of the assets of the estate. 28 U.S.C. Section 157(b)(2)(A); (b)(2)(B); (b)(2)(C); and (b)(2)(O).

Id. at 416.

.....

Review of the cases struggling for a precise point of delineation between core and non-core proceedings reveals a common factor which clearly distinguishes them from the present matter--

they all refer to cases commenced by the debtor either prior to or post-bankruptcy petition. Herein, we are confronted with an action brought by a creditor and we have found no cases where the core/non-core issue has arisen in this context.

We conclude that the reason for the dearth of cases on this converse situation is premised on the fact that this state law contract matter was initiated when Southeastern filed its proof of claim. This is not a situation akin to the above-mentioned cases where a debtor brought suit against either a creditor or a third party, but rather, is an action which has as its foundation, a question of the validity of a claim which accrued under state law against the bankrupt estate prior to bankruptcy.

"Claim" is defined in 11 U.S.C. Section 101(4)(A) as: "Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or ..." Clearly Southeastern's breach of warranty action falls within this definition since it represents a right to payment for losses suffered as a result of Meyertech's supplying unfit goods. We are thus persuaded that 28 U.S.C. Section 157 (b) (2) (B), defining allowance or disallowance of claims against the estate as a core proceeding, governs the outcome of this issue.

Id. at 417.

We thus conclude that Southeastern's cause of action based upon state law is correctly characterized as a claim against the bankrupt estate of Meyertech.

As such, the litigation of its merits is a core proceeding under the bankruptcy judge's jurisdiction as provided by Section 157(b)(2)(B). The filing of the claim by Southeastern created this action in bankruptcy court, and this is the proper forum for its adjudication. By its very nature it fits directly under the more specific definition of a core proceeding under Section 157(b)(2)(B), rather than under the umbrella provisions of Section 157(b)(2)(A) or (b)(2)(O).

Southeastern's contention that consent to the bankruptcy court's jurisdiction cannot be inferred from its initiation of this action by proof of claim is indeed a strained argument. This appeal entails a title 11 matter and regardless of how or where commenced in the federal court system, it would have been referred to the jurisdiction of the bankruptcy court. We do not infer any conclusions of law from Southeastern's filing of the proof of claim; in fact, we acknowledge that Southeastern had no choice as to its forum of adjudication since its cause of action is a case arising under title 11 (emphasis added).

Id. at

The case of In re Meyertech Corp., supra, thus involved the question of the validity of a proof of claim which accrued, as in the Job-Calder matter, prior to the bankruptcy. The Third Circuit Court of Appeals held that such a question of claim validity pursuant to 28 U.S.C. Section 157(b)(2)(B) was

core. Job's cause of action, as was true of the Southeastern claim, was a pre-petition claim against the bankrupt estate of Calder and was therefore a core matter.

Another case involving a claim against the estate is Matter of Colorado Energy Supply, Inc., 728 F.2d 1283 (10th Cir. 1984). This case involved a claim by a creditor to the proceeds of a sale of debtor's property. The Bankruptcy Court for Colorado took jurisdiction and disbursed proceeds of a sale allowing certain costs. One of the creditors of the debtor, a landlord, was denied her claim for rent. It is similar to the Job claim inasmuch as it involves a pre-petition claim against the estate. The Bankruptcy Court ruled that the landlord's claim for rent was not an allowable cost of the sale. On appeal the landlord contended that the proceeding was related to Title 11 and therefore did not become final for purposes of appeal until the sale was approved by the District Court. The Tenth Circuit Court of Appeals in essence held the claim for rent from the estate was

core stating:

It is plain that the matters before us are contested matters concerning the administration of the estate, and allowance of and objection to claims against the estate. All these things are integral to the administration of the bankruptcy estate.

Id. at 1286.

The case of In re Manville Forest Products Corp., 896 F.2d 1384 (2nd Cir. 1990) involved a Chapter 11 filing on August 26, 1982, by M.F.P., a wholly-owned subsidiary of Manville Corporation. Prior to the filing, M.F.P. and Gulf, an oil and gas exploration company wholly-owned by Gulf States Oil and Refining Company, entered into a hydrocarbon exploration agreement.

Gulf timely filed a proof of claim alleging a breach of contract seeking \$16,035,000.00 damages. This is similar to the instant case inasmuch as it involves a right to payment alleged to be owing a creditor as of the filing date and a proof of claim filed as a result of this claim. An objection to the proof of claim was filed by Manville which is another similarity to

the instant case. The Bankruptcy Court held that M.F.P. fully sustained its objection to Gulf's proof of claim and accordingly expunged the claim.

The Bankruptcy Court held that the adversary proceeding constituted a core proceeding within the meaning of 28 U.S.C. Section 157 reasoning the adversary proceeding involved a plain and simple objection to a claim and accordingly was clearly a core matter. Gulf appealed to the District Court which affirmed the Bankruptcy Court. On appeal the Second Circuit Court of Appeals affirmed the matter as core stating:

The adversary proceeding at issue here involves a simple objection to a proof of claim and clearly falls within the literal language of Section 157(b) (2) (B) , which provides that all proceedings involving the "allowance or disallowance of claims against the estate" (other than proceedings involving "the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11") are core matters. Despite this statutory language, however, Gulf contends that its state law breach of contract claim is merely "related to" the bankruptcy case, and that such claim would have been filed in the state court but for the bankruptcy filing. Thus,

Gulf argues, Marathon requires such claim to be adjudicated by an Article III judge. We disagree.

Marathon, supra, 458 U.S. at 50, which invalidated the broad grant of jurisdiction to bankruptcy courts provided for in the Bankruptcy Act of 1978, 28 U.S.C. Section 1471 (Supp. IV 1980), involved a pre-petition breach of contract action brought by the Chapter 11 debtor in the bankruptcy court against the defendant. The defendant had not filed a proof of claim and apparently had no other connection with the bankruptcy case. Justice Brennan, writing for a plurality, distinguished "the restructuring of debtor-creditor relations which is at the core of the federal bankruptcy power," from the "adjudication of state-created private rights." Marathon, supra, 458 U.S. at 71. The Court held that state-created private rights, such as the debtor's breach of contract claim must be adjudicated by an Article III judge. Id. at 69-70, 84 see also Cooper, supra, 896 F.2d at 1398.

While it is true that the instant adversary proceeding involved a pre-petition breach of contract claim, as in Marathon, there is one crucial distinction which Gulf ignores. Unlike the defendant in Marathon, Gulf filed a proof of claim in M.F.P.'s Chapter 11 case. By filing a proof of claim, Gulf submitted itself to the equitable power of the bankruptcy court to disallow its claim. Granfinanciera, S.A. v. Nordberg, 109 S.Ct. 2782, 2799, n. 14 (1989). As the Fifth Circuit aptly explained,

"A claim against the estate is instituted by filing a proof of claim as provided by the bankruptcy rules. The filing of the proof invokes the

special rules of bankruptcy concerning objections to the claim, estimation of the claim for allowance purposes, and the rights of the claimant to vote on the proposed distribution. Understood in this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy. Of course, the state-law right underlying the claim could be enforced in a state court proceeding absent the bankruptcy, but the nature of the state proceeding would be different from the nature of the proceeding following the filing of a proof of claim.

Id. at 1389.

.....

In view of the foregoing, we hold that the instant adversary proceeding, which involves the determination of an objection to a proof of claim filed in the bankruptcy case, is clearly at the core of the federal bankruptcy function of restructuring debtor-creditor rights, implicating the unique powers of bankruptcy courts.

Id. at 1390.

The case of In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986) involved a secured creditor, Blackburn-Bliss Realty, Inc., who held a promissory note issued to it by Hudson Shipbuilders, Inc. for \$1,600,000.00. The note was secured by a mortgage. The mortgage was a first lien on

Hudson's property. Allied Bank was the holder of a second mortgage on the Hudson property in the amount of \$2,800,000.00. Hudson defaulted to the first mortgage and on February 9, 1983, filed for relief under Chapter 11. Blackburn-Bliss responded by filing a proof of claim in the bankruptcy court for the full amount of the claim, including interest and attorney fees. The automatic stay was later lifted and foreclosure followed. There was a dispute as to the proper amount of attorney fees pursuant to 11 U.S.C. Section 506. Allied Bank, the second mortgage holder, filed a motion requesting the bankruptcy court to determine the amount of attorney fees which Blackburn-Bliss was properly entitled to in connection with its note.

Hudson, as in the Calder case, involved a pre-petition claim although secured in this instance, a proof of claim filed by the creditor, and an objection to the proof of claim, all elements shared with the Calder case. The Bankruptcy Court had jurisdiction

to fix the amount of attorney fees which could be demanded as part of the Blackburn-Bliss claim. The Fifth Circuit held:

By filing a proof of claim in the bankruptcy proceeding, Blackburn-Bliss impliedly consented to the jurisdiction of the bankruptcy court, at least as to a determination of the validity and amount of the claim asserted. See In re Skyline Lumber Company, 311 F.Supp. 112, 117 (W.D. Va. 1970). Since Blackburn-Bliss was asserting a claim for the attorneys' fees stipulated in its note, it necessarily called for a determination by the bankruptcy court as to the appropriate amount of attorneys' fees to be allowed pursuant to 11 U.S.C. Section 506(b). See In re Dooley, 41 B.R. 31 (Bankr. N.D. Ga. 1984). See also, In re Bryant, 626 F.2d 492 (5th Cir. 1980).

More importantly, however, it is clear that the bankruptcy court had jurisdiction over this action because it constitutes a core proceeding arising under Title 11.

Id. at 1054.

The United States Supreme Court, in Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939) was presented the question of the power of the bankruptcy court to disallow either as a secured or as a general or unsecured claim a judgment obtained by the dominant and controlling stockholder of the bankrupt corporation on allegedly selling

claims. This case involved the allowance of a bankruptcy claim. Justice Douglas in delivering the opinion, stated:

Among the granted powers are the allowance and disallowance of claims; the collection and distribution of the estates of bankrupts and the determination of the controversies in relation thereto; the rejection in whole or in part "according to the equities of the case" of claims previously allowed' and the entering of such judgments "as may be necessary for the enforcement of the provisions" of the Act. In such respects the jurisdiction of the bankruptcy court is exclusive of all other courts (emphasis added). United States Fidelity & Guaranty Co v. Bray, 225 U.S. 205, 217.

Id. at 303.

Bankruptcy jurisdiction under the Bankruptcy Amendments and Federal Judgeship Act of 1984 is to be construed as broadly as possible within the constitutional constraints of Marathon. See In re Ben Cooper, Inc., 896 F.2d 1394 (2nd Cir. 1990) in which the Second Circuit Court of Appeals stated:

The statements of several influential legislators, however, indicate that bankruptcy jurisdiction was to be construed as broadly as possible within the constitutional constraints of Marathon. We agree with the First Circuit's analysis of the legislative history. As that court stated,

"The legislative history of (Section 157) indicates that Congress intended that 'core proceedings' would be interpreted broadly, close to or congruent with constitutional limits. The sponsors repeatedly said that 95 percent of the proceedings brought before bankruptcy judges would be core proceedings. See 130 Cong. Rec. E1108-1110 (Daily ed. March 20, 1984) (statement of Representative Kastenmeier); Id. at H1848, H1850 (daily ed. March 21, 1984) (statement of Representative Kindness). They used arguments strongly suggesting that they were pressing the notion to its constitutional bounds. They referred to the suits in the non-core category as 'Marathon-type' cases, see e.g., id., at E1108, E1109 (daily ed. March 20, 1984) (prepared statement of Representative Kastenmeier); id. at H1848 (daily ed. March 21, 1984) (statement of Representative Kindness), which they understood to be proceedings of 'a very limited kind,' id. at H1848 (daily ed. March 21, 1984) (statement of Representative Kindness)."

In re Arnold Print Works, Inc., 815 F.2d 165, 168 (1st Cir. 1987) (Breyer, J.).

Id. at 1398.

A bankruptcy court has jurisdiction of disputes at the outset of the case. In re Gardner, 913 F.2d 1515, 1518 (10th Cir. 1990); and Matter of Xonics, Inc., 813 F.2d 127, 131 (7th Cir. 1987). At the outset of the filing the bankruptcy instantly alters the rights

of the parties. Delgado Oil Co., Inc. v. Torres, 785 F.2d 857, 860 (10th Cir. 1986).

The rights of the parties, the Jobs and Calder, are measured as of the commencement of the Calder Chapter 13 on February 23, 1984. At this point in time, Job had a right for payment as the Code defines such a claim and that claim was unliquidated and disputed by Calder. The filing of the Chapter 13 by Calder transmuted the rights of the Jobs. The Job right to payment, although disputed by Calder, as of February 23, 1984, could not have any existence outside of bankruptcy. This is so obvious that it hardly needs belaboring.. Such a controversy between Calder and the Jobs is clearly at the core of the Federal bankruptcy function of restructuring debtor-creditor rights which implicate the unique powers of the Bankruptcy Court.

The Job pre-petition claim involves the proper administration of the Calder Chapter 13 inasmuch as the Calder case could not be closed under 11 U.S.C. Section 350 until the Job pre-petition claim had been fully

adjudicated. The outcome of the Job pre-petition claim litigation would clearly impinge on the amount of estate property that would be distributed to Calder's other creditors. The outcome also would affect property of the estate inasmuch if the State court has jurisdiction, then the judicial lien created by the State court judgment will of necessity reduce the amount of property of the estate of Calder to be disbursed to other creditors.

Original jurisdiction over the Job claim will obviously encourage efficient and expeditious resolution of all matters connected to the bankruptcy estate. There exists an undeniable relationship between the outcome of the disputed pre-petition Job claim and the administration of the bankruptcy estate.

The power of the states to create creditor rights is subordinate to the power of Congress conferred by the Supremacy Clause of the United States Constitution and Article I, Section 8, Clause 4 of the Constitution which

establishes uniform bankruptcy laws.

Title 11 and Title 28 of the United States Code, decisions of the Supreme Court of the United States and Circuit Court decisions indicate the Job disputed pre-petition claim is a core proceeding in the Calder Chapter 13 case because it is a civil proceeding that arises in the Calder Chapter 13 case at the time of the commencement of the case pursuant to 11 U.S.C. Section 1334(b).

VI. THE JOB CLAIM AS OF FEBRUARY 23, 1984, WAS A CIVIL PROCEEDING PURSUANT TO 11 U.S.C. SECTION 1334(b) RELATED TO THE CALDER CHAPTER 13 CASE.

The dominant Circuit Court case interpreting the limits to Federal bankruptcy jurisdiction in proceedings related to bankruptcy under 11 U.S.C. Section 1334(b) is Pacor, Inc. v. Higgins, 743 F.2d 984 (3rd Cir. 1984).

The facts are quite simple. John and Louise Higgins initially brought a products liability suit against Pacor in the Pennsylvania Court of Common Pleas. They sought damages allegedly caused by Mr. Higgins work-related exposure to asbestos supplied by

Pacor, the distributor of chemical supplies.

In response, Pacor filed a third party complaint impleading the Johns-Manville Corporation, which Pacor claims was the original manufacturer of the asbestos.

On August 26, 1982, Johns-Manville filed a Chapter 11 petition in bankruptcy in the United States Bankruptcy Court for the Southern District of New York. The Third Circuit Court of Appeals held:

In enacting section 1471(b), Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate. See H. Rep. No. 598, 95th Cong., 2d sess., 43-48, reprinted in 1978 U.S. Code Cong. & Admin. News, 5963, 6004-08. See also Young v. Sultan, Ltd., (In re Lucasa International, Ltd.), 6 B.R. 717, 719 (Bankr. S.D. N.Y. 1980) (Section 1471(b) jurisdiction is "pervasive"); Westinghouse Credit Corp. v. Yeary (In re Brothers Coal Co.), 6 B.R. 567, 570-71 (Bankr. W.D. Va. 1980) (Section 1471(b) jurisdiction is "broad.") The jurisdiction of the bankruptcy courts to hear cases related to bankruptcy is not without limit, however, and there is a statutory and eventually constitutional limitation to the power of a bankruptcy court. For subject matter jurisdiction to exist, therefore, there must be some nexus between the "related" civil proceeding and the title 11 case. See In re Hall, 30 B.R. 799, 802 (M.D. Tenn.

1983); 1 Collier on Bankruptcy, Paragraph 3.01 at 3-48 to 3-49 (15th ed. 1982). We find that nexus to be absent here.

As a threshold matter, it should be noted that the Higgins-Pacor suit is one between two parties, neither of which has filed in bankruptcy, in contrast to the Pacor-Mancille third party claim, where the defendant Manville is engaged in bankruptcy proceedings and which is therefore clearly "related to" bankruptcy. It must therefore be determined whether the primary action between Higgins and Pacor, although not one directly involving the debtor Manville, is still sufficiently connected with the Manville bankruptcy estate, such that jurisdiction lies under 28 U.S.C. Section 1471(b).

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. E.g. In re Hall, 30 B.R. at 802; In re General Oil Distributors, Inc., 21 B.R. 888, 892 n. 13 (Bankr. E.D. N.Y. 1982); In re U.S. Air Duct Corp., 8 B.R. 848, 851 (Bankr. N.D. N.Y. 1982); 1 Collier on Bankruptcy, Paragraph 3.01 at 3-49. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate.

Id. at 994.

The Tenth Circuit Court of Appeals has

adopted the Pacor formulation in In re Gardner, 913 F.2d 1515 (10th Cir. 1990):

Bankruptcy courts also have jurisdiction over related proceedings, under the authority of 28 U.S.C. Section 1471(b), which confers jurisdiction on district courts for cases related to title 11 proceedings. In re Fietz, 852 F.2d 455, 456 (9th Cir. 1988); see also 28 U.S.C. Section 157. Related proceedings are civil proceedings that, in the absence of a bankruptcy petition, could have been brought in a district court or state court. In re Colorado Energy Supply, Inc., 728 F.2d 1283, 1286 (10th Cir. 1984). "(T)he test for determining whether a civil proceeding is related in bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). Although the proceeding need not be against the debtor or his property, the proceeding is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action in any way, thereby impacting on the handling and administration of the bankruptcy estate. Id.; see also In re Wood, 825 F.2d at 93 (related matters conceivably have effect on administration of bankruptcy estate); In re Dogpatch U.S.A., Inc., 810 F.2d 782, 786 (8th Cir. 1987) (same); In re Bobroff, 766 F.2d 797, 802 (3rd Cir. 1985) (same).

Id. at 1518.

In the case of Robinson v. Michigan Consol. Gas Co., Inc., 918 F.2d 579 (6th Cir. 1990), Chapter 7 debtors brought suit against

the bankruptcy trustee and against a utility which provided services to an apartment building for alleged wrongful discontinuation of services to their individual apartments. As to the issue of whether this action was a related procedure to the bankruptcy the Sixth Circuit Court of Appeals held:

The circuit courts have uniformly adopted an expansive definition of a related proceeding under section 1334(b) and its substantially identical predecessor under the Bankruptcy Reform Act of 1978, 28 U.S.C. Section 1471(b). As the Third Circuit explained in In re Pacor, Inc., 743 F.2d 984 (3rd Cir. 1984): (Pacor quote omitted).

.....

The Pacor formulation has been adopted by the Fourth Circuit, see In re A.H. Robins Co., 788 F.2d 994, 1002, n. 11, (4th Cir. 1985) (dicta), cert. denied, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed. 2d 177 (1986); The Fifth Circuit, see In re Wood, 825 F.2d at 93; the Eighth Circuit, see In re Dogpatch, U.S.A., Inc., 810 F.2d 782, 786 (8th Cir. 1987); and the Ninth Circuit, see In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988). We too have accepted the Pacor articulation, albeit with the caveat that "situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement." In re Salem Mortgage Co., 783 F.2d 626, 634 (6th Cir. 1986); accord In re Turner, 724 F.2d 338, 341 (2nd Cir. 1983).

Because the plaintiffs appear to have sued the Trustee of the Woodward estate in his official capacity, and therefore to seek recovery from the estate itself, see Ford Motor Credit Co. v. Weaver, 680 F.2d 451, 461 (6th Cir. 1982), the outcome of the litigation could conceivably affect the size of the Woodward estate. Accordingly, we agree with the defendants that this action is "related to" a bankruptcy proceeding. Because the district court would have had original jurisdiction over this action as a related proceeding pursuant to 28 U.S.C. Section 1334(b), it had removal jurisdiction under 28 U.S.C. Section 1452.

Id. at 583.

The Ninth Circuit Court of Appeals in In re Fietz, 852 F.2d 455 (9th Cir. 1988) considered the issue of whether a Chapter 13 debtor's former wife's cross claim against a mortgagee was a matter sufficiently related to the Chapter 13 of the husband so that federal jurisdiction existed over the wife's cross claim. The Ninth Circuit Court of Appeals formulated its test for "related to" as follows:

Various circuits have developed slightly different definitions of what constitutes a "related" case under section 1471(b) and its identical successor, section 1334(b). The Third Circuit articulated what has become the dominant formulation: Id. at 457

.....

The Fourth, Fifth and Eighth Circuits have adopted the Pacor definition without modification. See Wood v. Wood (In re Wood), 825 F.2d 90, 93 (5th Cir. 1987); Dogpatch Properties, Inc. v. Dogpatch U.S.A., Inc. (In re Dogpatch), 810 F.2d 782, 786 (8th Cir. 1987); A.H. Robins Co., Inc., 788 F.2d 994, 1002 n. 11 (4th Cir.) (dicta), cert. denied, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986).

The Second, Sixth and Seventh Circuits have adopted definitions similar to the one announced in Pacor, but their formulations may deny jurisdiction in cases where the dispute is "conceivably" related to the bankruptcy estate, but that relationship is remote. See Turner v. Ermiger (In re Turner), 724 F.2d 338, 341 (2nd Cir. 1983); Kelley v. Nodine (In re Salem Mortgage Co.,), 783 F.2d 626, 634 (6th Cir. 1986); Elscint, Inc. v. First Wisconsin Fin. Corp. (In re Xonics, Inc.), 813 F.2d 127 (7th Cir. 1987).

We conclude that the Pacor definition best represents Congress's intent to reduce substantially the time-consuming and expensive litigation regarding a bankruptcy court's jurisdiction over a particular proceeding. See H. Rep. No. 595, 95th Cong., 2d Sess., 43-48, reprinted in 1978 U.S. Code Cong. & Admin. News, 5787, 5963, 6004-08. The Pacor definition promotes another congressionally-endorsed objective: the efficient and expeditious resolution of all matters connected to the bankruptcy estate. See id. We therefore adopt the Pacor definition quoted above. We reject any limitation on this definition; to the extent that other circuits may limit jurisdiction where the Pacor

decision would not, we stand by Pacor. Applying the Pacor definition to the facts at hand, we consider whether the outcome of Gordon's cross-claim conceivably could have affected the administration of Fietz' bankruptcy estate when Gordon filed her cross-claim on July 14, 1983.

Id. at 457.

The Sixth Circuit in In re Salem Mortgage Co., 783 F.2d 626 (6th Cir. 1986) considered the test for "related to" in a case involving a bankruptcy order approving class certification and settlement of a class action suit.

The Sixth Circuit stated:

The emphatic terms in which the jurisdictional grant is described in the legislative history, and the extraordinarily broad wording of the grant itself, leave us with no doubt that Congress intended to grant to the district courts broad jurisdiction in bankruptcy cases.

Id. at 633.

.....

Congress wisely chose a broad jurisdictional grant and a broad abstention doctrine over a narrower jurisdictional grant so that the district court could determine in each individual case whether hearing it would promote or impair efficient and fair adjudication of bankruptcy cases. (Emphasis added.) See Note, Selective Exercise of Jurisdiction in Bankruptcy Related Civil

Proceedings, 59 Tex.L.Rev. 325, 334-36, (1981).

Id. at 635.

For further support in accord with Calder's position that the Job pre-petition claim was a proceeding related to the Calder Chapter 13 case, see the following Circuit Court cases: Diamond Mortgage Corp. of Illinois v. Sugar, 913 F.2d 1233 (7th Cir. 1990); In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986); Kaonohi Ohana, Ltd. v. Sutherland, 873 F.2d 1302 (9th Cir. 1989); Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d 746 (7th Cir. 1989); Matter of Majestic Energy Corp., 835 F.2d 87 (5th Cir. 1988); National City Bank v. Coopers and Lybrand, 802 F.2d 990 (8th Cir. 1986); Nationwide Mutual Fire Ins. Co. v. Eason, 736 F.2d 130 (4th Cir. 1984); Matter of Xonics, Inc., 813 F.2d 127 (7th Cir. 1987); and In re Bobroff, 766 F.2d 797 (3rd Cir. 1985).

Applying the Pacor test to the facts of the Calder Chapter 13 case, what is the actual effect and/or conceivable effect of

the Job litigation and/or claim on the Calder 1984 Chapter 13? It has the profound effect of substantially increasing the Job claim against the Calder estate and simultaneously diluting the claims of other unsecured claim-holders. Upon the outcome of this claim liquidation depends the distribution to other creditors. It has a direct necessarily substantial impact upon the distribution of the property of the estate inasmuch as claims against the estate can only be satisfied out of property of the estate. It clearly is at the center of the federal bankruptcy function of restructuring debtor-creditor rights in the Calder Chapter 13 which implicates the unique power of the bankruptcy court.

The Job pre-petition claim has a potential impact on the property of the estate inasmuch if the state court is allowed jurisdiction over the claim which results in a judgment against Calder, then there would pursuant to U.C.A. 78-22-1 be a judicial lien imposed on all the real property of Calder in Salt Lake County. The Jobs with

a judgment would also conceivably be able to execute on property of the Calder estate, including earnings, which would impact upon administration of the estate. This would make reorganization by the debtor difficult. The Calder Chapter 13 case clearly could not be closed under 11 U.S.C. Section 350 and a discharge granted under Section 1328 until the Job pre-petition claim had been handled. It would clearly, directly and necessarily impact upon the administration of the Calder estate.

There exists an undeniable relationship between the outcome of the Job pre-petition claim or cause of action and the administration of the bankruptcy estate. The Title 11 Code provisions that would or could conceivably involve the Job pre-petition claim are as follows: Section 350, closing estates; Section 501, filing proof of claims; Section 502, allowance of claims; Section 541, property of the estate; Section 1306, property of the estate; Section 1321, filing of plan; Section 1321, modification of plan before

confirmation; Section 1322, contents of plan; Section 1324, confirmation hearing; Section 1325, confirmation of plan; Section 1326, payments; Section 1327, effect of confirmation; Section 1329, modification of plan after confirmation; and Section 1328, discharge. The act of the Jobs in filing a proof of claim in Calder's 1984 Chapter 13 indicates the Jobs themselves and their counsel considered the Job pre-petition claim was inherently related to the Calder 1984 Chapter 13 case.

That the Job pre-petition claim as of February 23, 1984, was a civil proceeding related to the Calder Chapter 13 under the Pacor test formulation is so obvious that it hardly needs to be belabored.

VII. AS OF THE COMMENCEMENT OF THE CALDER CHAPTER 13 CASE ON FEBRUARY 23, 1984, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH HAD EXCLUSIVE JURISDICTION OVER ALL OF THE PROPERTY OF CALDER, WHEREVER LOCATED.

Congress intended a broad range of property to be included in the estate. United States v. Whiting Pools, Inc., 462 U.S. 198,

103 S.Ct. 2309, 76 L.Ed. 515 (1982):

The statutory language reflects this view of the scope of the estate. As noted above, Section 541(a)(1) provides that the "estate is comprised of all the following property wherever located: ...all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. Section 541(a)(1) (1976 ed., Supp. V). The House and Senate Reports on the Bankruptcy Code indicate that Section 541(a)(1)'s scope is broad.*

Id. at 204.

The Tenth Circuit Court of Appeals in Delgado Oil Co., Inc. v. Torres, 785 F.2d 857 (10th Cir. 1986) held that a debtor filing a Chapter 11 petition deprived the United States District Court of Wyoming of subject matter jurisdiction. The facts are as follows:

In July 1982, the Delgado Oil Company commenced an action which was removed to the

*"The scope of this paragraph (Section 541(a)(1)) is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act Section 70a(6)), and all other forms of property currently specified in Section 70a of the Bankruptcy Act." Id. at 367; S. Rep. No. 95-989, p. 82 (1978), U.S. Code Cong. & Admin. News, 1978, pp. 5868, 6323.

United States District Court for the District of Wyoming. The action claimed that the defendant, Cleveland, as a director of an insolvent corporation, Balducci Oil Company, made a false representation about the company's financial statements on which Delgado relied in extending credit to Balducci. Delgado also claimed Cleveland willfully mismanaged the assets of the company resulting in the preferential payment of certain Balducci creditors whose debts were guaranteed by Cleveland. Delgado alleged these actions were taken to protect and promote Cleveland's personal interests to the detriment of the corporation and in breach of his fiduciary obligation to Delgado. After a bench trial, the District Court concluded Cleveland was not liable for fraud but applying Colorado common law found Cleveland in his capacity as a director of an insolvent corporation, liable for unlawful preferential payments in breach of his fiduciary duty. In March 1982, prior to the trial, Balducci had

filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado. Delgado filed a claim as an unsecured creditors in the bankruptcy court and was a member of the creditors committee. More importantly, no party apparently considered the possible effect of bankruptcy nor presented the question of whether the trial court retained jurisdiction over the issue of a preferential transfer. This is similar to the Calder case inasmuch as no one considered whether the Utah District Court retained jurisdiction over the property of Calder's Chapter 13 estate.

Judge Moore of the Tenth Circuit Court of Appeals delivered the opinion as to the jurisdictional issue, holding:

Nevertheless, once addressed, this critical question is dispositive. Subject matter jurisdiction is never presumed. In every case and at each stage of the proceeding, we must satisfy ourselves that our jurisdiction is proper.

Treinies v. Sunshine Mining Co., 308 U.S. 66, 60 S.Ct. 44, 84 L.Ed. 85 (1939). Moreover, although the parties never challenged jurisdiction, we must sua sponte raise the issue to assure our

proper jurisdiction. Tafoya v. U.S.
Dept. of Justice, LEAA, 748 F.2d 1389
(10th Cir. 1984).

The question presented is whether, under the Bankruptcy Reform Act of 1978 (The Code), the filing of a bankruptcy petition by a corporation deprives the district court of jurisdiction to try the issue of a preferential transfer (emphasis added) by a corporate director and vests the bankruptcy court with exclusive jurisdiction. After viewing the appropriate statutory provisions, we conclude the question must be answered in the affirmative.

We start our analysis with the provisions of 28 U.S.C. Section 1471(a), (e) (1978), which states:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

.....

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

Subsection (e) creates exclusive jurisdiction in the bankruptcy court of "all property of the debtor" (emphasis in citation).

Id. at 859.

.....

Thus, the filing of the bankruptcy petition by Balducci transmuted the legal rights of its creditors seeking recovery of corporate debts.

Id. at 861.

.....

The overriding nature of the bankruptcy action to recover a preference cannot be circumvented. When a debtor corporation has made a transfer of its assets which results in the preference of one or more creditors over others, the purpose of an action against those transferees is to return assets to the debtor's estate for equitable distribution to all creditors. While the common law action to recover a preferential transfer can be maintained by creditors under certain circumstances, the intervention of the events of bankruptcy and the pervasive jurisdiction of the bankruptcy court must negate the common law right of recovery. The negation occurs to satisfy the basic bankruptcy purpose of treating all similarly situated creditors alike. To do this, the trustee in bankruptcy is given power to recover, as property of the debtor, preferentially transferred property of the value of that property.

Id. at 861.

Equality of treatment of creditors and exclusive jurisdiction over all estate property as of the date of filing in the Calder case as in Delgado, supra, mandate that the filing by Calder of a Chapter 13 on February 23, 1984, in the United States Bankruptcy Court

for the District of Utah, as was true in a similar case in Delgado, supra, for the United States Bankruptcy Court for the District of Colorado, deprives the non-bankruptcy state court of jurisdiction over the property of the estate of Calder in his Chapter 13.

In State of Missouri v. U.S. Bankruptcy Court, Etc., 647 F.2d 768 (8th Cir. 1981), the State of Missouri sought a writ of prohibition to prevent a bankruptcy court in the Eastern District of Arkansas from exercising jurisdiction over grain stored by the debtors. The United States District Court for the Eastern District of Arkansas denied the writ ruling that the bankruptcy court possessed exclusive jurisdiction over the estate of the debtors, which included all legal and equitable interests in property of the debtors wherever located as of the commencement of the case. The Eighth Circuit affirmed and held that:

To determine whether the bankruptcy court has jurisdiction over the Missouri grain, therefore, we must decide if the debtors' interest in the Missouri grain falls

within section 541's broad definition of property.

Id. at 774.

.....

On the record before us, the debtors' interest in the Missouri grain consists of possession and a minute ownership interest. In light of the broad definition of property under section 541 of the Code, these interests in the grain are sufficient to trigger preliminary jurisdiction over the property in the bankruptcy court. 4 Collier on Bankruptcy, Paragraph 541.08 (2) (15th ed. 1979); see In re Farmers Grain Exchange, Inc., 1 Bankr. Ct. Dec. 1621 (W.D. Wis. 1975).

Id. at 774.

The case of Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940) involved the question of whether the Frazier-Lemke Act from the moment a petition was filed and so long as it remained pending operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of a Wisconsin County Court so as to stay its power to proceed with foreclosure of a mortgage on debtors' farm. The facts are as follows:

Ernest Kalb and Margaret Kalb were

Wisconsin farmers who owned a farm. The mortgage holders on this Wisconsin farm were Henry Feuerstein and Helen Feuerstein, his wife. The Feuersteins on March 7, 1983, began foreclosure on the Kalb's farm in the Walworth (Wisconsin) County Court. A judgment of foreclosure was entered on April 21, 1983. On July 20, 1935, the sheriff sold the property under the judgment while Ernest Kalb had pending in the bankruptcy court a petition for composition and extension of time to pay his debts under Section 75 of the Bankruptcy Act (Frazier-Lemke Act). The Walworth County Court granted the Feuerstein motion for confirmation of the sale. No stay of the foreclosure or of the subsequent action to enforce it was ever sought or granted in the state or bankruptcy courts. On December 16, 1935, the Feuersteins obtained a writ of assistance from the state court and on March 12, 1936, the sheriff executed the writ by ejecting the Kalbs and their family from the mortgaged farm.

The question was whether the Wisconsin County Court had jurisdiction while the petition under the Frazier-Lemke Act was pending in the bankruptcy court to confirm the sheriff's sale and order the Kalbs dispossessed of their farm and if the court lacked jurisdiction whether its action in the absence of direct appeal is subject to collateral attack.

After ejection from their farm, the Kalbs brought an action in equity in the Circuit Court of Walworth County, Wisconsin, against the Feuersteins, who had purchased at the sheriff's sale, for the removal of the mortgagees from the farm. Demurrer was sustained for failure to state a cause of action and the complaint was dismissed. The Supreme Court of Wisconsin affirmed.

Addressing itself solely to this federal question of construing the Frazier-Lemke Act, the Wisconsin Court decided that the federal act did not itself as an automatic stay terminate the state court's jurisdiction when the

farmer filed his petition in the bankruptcy court. Since there had been no judicial stay, it held that the confirmation of sale and writ of assistance were not in violation of the Act.

On appeal to the United States Supreme Court, Justice Black delivered the opinion of the Supreme Court of the United States, which held:

But if appellants are right in their contention that the Federal Act of itself, from the moment the petition was filed and so long as it remained pending operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the State court so as to stay its power to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the Walworth County Court was not merely erroneous but was beyond its power, void, and subject to collateral attack. And the determination whether the Act did so operate is a construction of that Act and a federal question.

It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a

debtor whom the bankruptcy law protects nullities and vulnerable collateral (citations omitted). Although the Walworth County Court had general jurisdiction over foreclosures under the law of Wisconsin, a preemptory prohibition by Congress in the exercise of its supreme power over bankruptcy that no State court have jurisdiction over a petitioning farmer-debtor or his property, would have rendered the confirmation of sale and its enforcement beyond the County Court's power and nullities subject to collateral attack (citations omitted). The states cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land (citations omitted). The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction over farmer-debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts--state and federal--must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone.

Id. at 438.

.....

In harmony with the general plan of
giving the farmer an opportunity for

rehabilitation, he was relieved--after filing a petition for composition and extension--of the necessity of litigation elsewhere and its consequent expense (emphasis added). This was accomplished by granting the bankruptcy court exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts (emphasis added).

The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Wal-
worth County Court that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress (emphasis added). Because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property--to the extent based upon the court's actions--were all without authority of law.

Id. at 443.

For additional case support that the United States District Court in which a case is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of the case, see Galloway v. Benton, 336 U.S. 132, 69 S.Ct. 435, 93 L.Ed. 553 (1949); Pepper v. Litton, 308 U.S. 295, 304, 60 S.Ct. 238, 244,

84 L.Ed. 281 (1939); In re Watts and Sachs, 190 U.S. 1 (1902); In re Titan Energy, Inc., 837 F.2d 325 (8th Cir. 1988); Begley v. Philadelphia Elec. Co., 760 F.2d 46 (3rd Cir. 1985); In re Modern Boats, 775 F.2d 619 (5th Cir. 1985); Wilson v. Bill Barry Enterprises, Inc., 822 F.2d 859 (9th Cir. 1987); In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986); In re Ben Cooper, 896 F.2d 1394 (2nd Cir. 1990); State of Texas v. Wellington Resources Corp., 706 F.2d 533 (5th Cir. 1983); In re Gardner, 913 F.2d 1515 (10th Cir. 1990); In re Brown, 734 F.2d 119 (2nd Cir. 1984); and Commodity Futures Trading Com'n v. Petro Mkts., 700 F.2d 1279 (9th Cir. 1983). -

In the Calder 1984 Chapter 13, there never was any motion filed for a lift of the automatic stay pursuant to 11 U.S.C. Section 362 or a motion filed for the Federal court to abstain pursuant to 28 U.S.C. Section 1334(c)(1) or Section 1334(c)(2).

At the time of the Calder-Job trial in January 1986 before the State Court and at

the time the judgment was entered on February 24, 1986, the United States District Court had exclusive jurisdiction of all of the property of Calder from the commencement of the Chapter 13 on February 23, 1984, until its dismissal in August 1986, and therefore the State Court lacked subject matter jurisdiction which proposition is amply supported by statutory and case authority.

CONCLUSION

The Utah District Court clearly did not have jurisdiction to try or enter a judgment in the Job case because of any and all of the three following reasons: (1) The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b), was a civil proceeding arising in the Calder 1984 Chapter 13 and was therefore a core matter under 28 U.S.C. Section 157(b)(2)(B); (2) The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b) was a civil proceeding related to the Calder Chapter 13; and (3) As of the commencement of the Calder Chapter 13 case on February 23, 1984, the United States

District Court for the District of Utah had exclusive jurisdiction of all of the property of Calder, wherever located.

RESPECTFULLY SUBMITTED this 23d day of September, 1991.

Richard Calder
RICHARD CALDER, Pro Se



APPENDIX A

Denial by the Supreme Court, State of Utah,
of Petitioner's Motion to Reverse because
of Manifest Error

IN THE SUPREME COURT

STATE OF UTAH

332 STATE CAPITOL

SALT LAKE CITY, UTAH 84114

June 13, 1991

OFFICE OF THE CLERK

Richard Calder
3366 South 2940 East
Salt Lake City, Utah 84109

Dennis R. Job and, No. 910137
Reta Job, 840905436CV
Plaintiffs and Appellees,
v.
Richard Calder,
Defendant and Appellant.

Appellant's motion to reverse for manifest error is this day denied. Appellees' motion to affirm is granted on the basis that the grounds for review are so insubstantial as not to merit further proceedings and consideration by this court. Utah R. App. P. 10(a)(2).

Geoffrey J. Butler
Clerk

APPENDIX B

Order of Judge Frederick which was appealed

Douglas J. Payne, A4113
FABIAN & CLENDENIN,
a Professional Corporation
Attorneys for Reta Job
Twelfth Floor
215 South State Street
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DENNIS R. JOB,)	
)	
Plaintiff,)	Civil No. 840905436CV
)	Judge J. Dennis
v.)	Frederick
)	
RICHARD CALDER,)	ORDER DENYING MOTION
)	TO DECLARE JUDGMENT
Defendant.)	VOID
)	

Defendant Richard Calder ("Calder") filed a Motion Asking that The Judgment Entered on February 24, 1986 be Declared Void Because the District Court Lacked Jurisdiction Or In the Alternative, Defendant's Motion Asking the Court to Enter an Order on Plaintiffs' Motion for Amendment of, Or in the Alternative, Relief from Judgment. Plaintiff Reta Job filed a memorandum opposing the portion of Calder's motion seeking to have the February 24, 1986 judgment declared void. Neither party requested oral argument on the motion

and Calder filed a Request to Submit for Decision. Based upon the pleadings, memoranda, and good cause appearing,

IT IS HEREBY ORDERED that defendant Richard Calder's Motion Asking That the Judgment Entered on February 24, 1986 Be Declared Void Because the District Court Lacked Jurisdiction is hereby denied on the basis that 28 U.S.C. Section 1334(a) did not divest this Court of subject matter jurisdiction over this case inasmuch as 28 U.S.C. Section 1334(b) provides for concurrent jurisdiction over civil proceedings relating to bankruptcy cases.

DATED this 4th day of March, 1991.

BY THE COURT:

S/S
J. Dennis Frederick
District Court Judge

APPROVED AS TO FORM:

S/S

Richard Calder
Defendant Pro Se

CERTIFICATE OF MAILING

I hereby certify that I mailed an unconfirmed copy of the foregoing Order Denying Motion to Declare Judgment Void this 27th day of February, 1991, postage prepaid, to the following:

Richard Calder
3366 South 2940 East
Salt Lake City, Utah 84109

S/S
SuzAnn G. Miller

DJP:022091A

APPENDIX C

Judgment of the District Court of the Third
Judicial District in and for Salt Lake
County, State of Utah, in Civil No. C-84-5436
rendered on February 24, 1986

PETER H. WALDO, ESQ., #3883
Attorney for Plaintiffs
275 East 200 South, Suite 150
Salt Lake City, Utah 84111
Telephone: (801) 364-1142

IN THE DISTRICT COURT
OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DENNIS R. JOB and)
RETA JOB,) JUDGMENT
)
Plaintiffs,)
)
v.) Civil No. C-84-5436
)
RICHARD CALDER,) JUDGE FREDERICK
)
Defendant.)

This matter having come before the Court for trial on the 9th and 10th days of January, 1986, and the Court having heard the testimony of the Witnesses, reviewed the evidence, entered its Findings of Fact and Conclusions of Law, and being otherwise fully informed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That Judgment is granted for the Plaintiffs in the amount of \$54,564, plus interest thereon at the rate of 12% per annum from

the date of entry hereof.

DATED this 24th day of February, 1986.

BY THE COURT:

S/S
JUDGE FREDERICK

APPENDIX D

28 U.S.C. Section 157

SECTION 157. Procedures.

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to --

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or

13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceedings requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

APPENDIX E

Docket Sheet of Case No. 84A-00492 in the
United States Bankruptcy Court, District of
Utah

It is not possible to type a Docket Sheet, but the Docket Sheet shows the Calder Chapter 13, Case No. 84A-00492, was filed on February 23, 1984 and dismissed on August 13, 1986.

APPENDIX F

Notice filed in State Court that A Chapter 13
had been filed

DANIEL R. BOONE
Attorney for Defendant
Suite 735, Judge Building
8 East 300 South
Salt Lake City, Utah 84111
Telephone: (801) 355-5225

IN THE DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

DENNIS R. JOB and)
RETA JOB,) NOTICE OF FILING
Plaintiffs,) OF CHAPTER 13
vs.) PETITION IN THE
RICHARD CALDER,) UNITED STATES
Defendant.) BANKRUPTCY COURT
) FOR THE DISTRICT
) OF UTAH
) Civil No. C-84-5436
) JUDGE FREDERICK
)

Please take notice that defendant filed a Chapter 13 Petition in the United States Bankruptcy Court for the District of Utah, Case No. 84A-00492 on February 23, 1984. The filing of the Chapter 13 Petition gives rise to a stay against further proceedings in prosecution of the collection of claims absent further Order of the United States Bankruptcy Court under the provisions of 11 U.S.C. Section 362. In the present instance the acts complained of by the

plaintiff arose prior to the filing of the Petition by the defendant and given the present posture of this proceeding 11 U.S.C. Section 362 precludes entry of judgment absent an Order of the United States Bankruptcy Court.

DATED this 5th day of February, 1986.

S/S
DANIEL R. BOONE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Filing of Chapter 13 Petition in the United States Bankruptcy Court for the District of Utah to Peter H. Waldo, Attorney for Plaintiffs, at Suite 150, 275 East 200 South, Salt Lake City, Utah 84111, postage fully prepaid, this 5th day of February, 1986.

S/S
DANIEL R. BOONE

APPENDIX G

Job Proof of Claim Filed in the Calder
Chapter 13

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:) Bankruptcy Case No.
Richard Calder,) 84A-00492
Debtor(s).) PROOF OF CLAIM

Please print or type. Attach additional pages if needed.

1. Claimant's name and address:

Dennis R. Job
Reta Job
1977 Arcadia Lane
Holladay, Utah 84117

2. The debtor was on the date the bankruptcy petition was filed, and still is, indebted to this claimant in the sum of \$54,543.90, which includes:

\$ 53,642.67 principal (if applicable)
812.46 earned interest (if applicable)
88.77 other (explain): Costs of
garnishments and executions

3. The debtor owes this money because:

Judgment against debtor for attorney malpractice; emotional distress; special, general and punitive damages awarded

4. A copy of any writing upon which this claim is based is attached.

5. The only security interest (collateral) held for this claim is:

Real property debtor owns in Salt Lake
and Utah County
(Attach writing, if any)

6. The claim is unsecured \$ _____
 X secured * \$ _____
 priority**\$ _____

\$54,543.90 = TOTAL AMOUNT CLAIMED

*The claim is unsecured except to the extent that the security interest has value sufficient to satisfy it.

**If priority is claimed, state basis under bankruptcy law:

S/S
DATED: May 14, 1986 By: Peter H. Waldo
Attorney for
Claimant

CLAIM NUMBER
(for office use only)

WARNING: Presenting a fraudulent claim in a bankruptcy case is a federal crime, bearing a penalty of a \$5,000 maximum fine and imprisonment of up to five years. 18 U.S.C. Section 152.

APPENDIX H

28 U.S.C. Section 1471

Except as provided in subsection (b) of this section the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11, or arising in or related to a case under title 11. Such abstention, or a decision

not to abstain, is not reviewable by appeal or otherwise.

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case. (a)

APPENDIX I

Motion and Memorandum that State District
Court lacked Jurisdiction

RICHARD CALDER, Pro Se
3366 South 2940 East
Salt Lake City, Utah 84109
Telephone: (801) 487-7044

IN THE DISTRICT COURT
OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DENNIS R. JOB and)
RETA JOB,)
Plaintiffs,) DEFENDANT'S MOTION
vs.) ASKING THAT THE
RICHARD CALDER,) JUDGMENT ENTERED ON
Defendant.) FEBRUARY 24, 1986 BE
) DECLARED VOID BECAUSE
) THE DISTRICT COURT
) LACKED JURISDICTION
) OR IN THE ALTERNATIVE
) DEFENDANT'S MOTION
) ASKING THE COURT TO
) ENTER AN ORDER ON
) PLAINTIFFS' MOTION
) FOR AMENDMENT OF,
) OR IN THE ALTERNATIVE
) RELIEF FROM JUDGMENT
)
) Civil No. C-84-5436
) JUDGE FREDERICK
)

I. THE JUDGMENT ENTERED ON FEBRUARY 24, 1986
IS VOID BECAUSE THE DISTRICT COURT LACKED
JURISDICTION.

The District Court of the Third Judicial
District in and for Salt Lake County, State
of Utah, at the time the above case was tried
on January 9 and 10, 1986, and at the time
the judgment was entered, February 24, 1986,

and docketed, February 26, 1986, lacked jurisdiction to try the case, enter the judgment, or docket the judgment.

The Defendant, Richard Calder, had filed a petition for relief under Chapter 13 in the United States Bankruptcy Court for the District of Utah, Case No. 84A-00492, on February 23, 1984 (see Exhibit A entitled Notice of Filing of Chapter 13 Petition in the United States Bankruptcy Court for the District of Utah) and (see Exhibit B which is a certification by the Clerk of the Bankruptcy Court of the filing date and the date of dismissal in the United States Bankruptcy Court for the District of Utah) and (see Exhibit B which is a certification by the Clerk of the Bankruptcy Court of the filing date and the date of dismissal).

The State District Court in the case at bar did not have any jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1334 and therefore pursuant to the ruling of the Supreme Court of the United States and the Supreme Court of the State of Utah, the

judgment in the case at bar entered on February 24, 1986, is void and the State District Court should so order.

II. DEFENDANT'S ALTERNATE MOTION ASKING THE COURT TO ENTER AN ORDER ON PLAINTIFFS' MOTION FOR AMENDMENT, OR IN THE ALTERNATIVE, RELIEF FROM JUDGMENT.

Defendant asks that the Court decide if the minute entry (see Exhibit C) refers to the motion filed on March 6, 1986, by attorney Peter H. Waldo, Esquire (see Exhibit D), or to the motion filed on June 10, 1986, by attorney John J. Borsos, Esquire (see Exhibit E).

If the minute entry applies to the March 6, 1986 motion, then Defendant asks the Court to sign and enter the attached order (see Exhibit F).

If the Court is of the opinion that the minute entry did not apply to the March 6, 1986 motion, then the Defendant asks the Court to now rule on and enter the appropriate order regarding the motion of Peter H. Waldo, Esquire, dated March 6, 1986.

Defendant has submitted a proposed order

to Plaintiffs' current counsel, Douglas J. Payne, Esquire, of the law firm of Fabian and Clendenin, but counsel has refused to sign although Defendant's counsel at the time of the June 20, 1988, Daniel R. Boone, Esquire has signed a proposed order (see Exhibit F and Exhibit G).

Pursuant to Rule 4-501(3) of the Code of Judicial Administration, a written request for a hearing is hereby made on this motion.

Richard Calder, acting pro se, hereby certifies to the Court that on January 22, 1991, he hand-delivered a copy of this motion and memorandum of points and authorities to Douglas J. Payne, Esquire, attorney for the Plaintiffs, at the law firm of Fabian and Clendenin, located at the 12th Floor, 215 South State Street, in Salt Lake City, Utah.

RESPECTFULLY SUBMITTED this 22nd day of January, 1991.

S/S

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IN THE DISTRICT COURT
OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DENNIS R. JOB and)
RETA JOB,) DEFENDANT'S MEMORAN-
) DUM OF POINTS AND
 Plaintiffs,) AUTHORITIES ASKING
) THAT THE JUDGMENT
 vs.) ENTERED ON FEBRUARY
 RICHARD CALDER,) 24, 1986 BE DECLARED
) VOID BECAUSE THE
 Defendant.) DISTRICT COURT LACKED
) JURISDICTION OR IN
) THE ALTERNATIVE
) DEFENDANT'S MEMOR-
) ANDUM OF POINTS AND
) AUTHORITIES ASKING
) THE COURT TO ENTER
) AN ORDER ON PLAINTIFFS' MOTION FOR
) AMENDMENT OF, OR
) IN THE ALTERNATIVE
) RELIEF FROM JUDGMENT
)
) Civil No. C-84-5436
) JUDGE FREDERICK
)

I. THE JUDGMENT ENTERED ON FEBRUARY 24, 1986
IS VOID BECAUSE THE DISTRICT COURT LACKED
JURISDICTION.

The District Court of the Third Judicial
District in and for Salt Lake County, State of
Utah, at the time the above case was tried
on January 9 and 10, 1986, and at the time the

judgment was entered, February 24, 1986, and docketed, February 26, 1986, lacked jurisdiction to try the case, enter the judgment or docket the judgment.

The Defendant, Richard Calder, had filed a petition for relief under Chapter 13 in the United States Bankruptcy Court for the District of Utah, Case No. 84A-00492, on February 23, 1984 (see Exhibit A entitled Notice of Filing of Chapter 13 petition of this case). The bankruptcy was viable and pending as of January and February 1986 inasmuch as it was not dismissed until July 30, 1986.

The statutory support for the claim of lack of jurisdiction of the state court is 28 U.S.C. Section 1334 which provides that the United States District Court shall have original and exclusive jurisdiction, with an exception that is not applicable in the case at bar, of all cases under Title 11 of the United States Code. 28 U.S.C. Section 1334 further states that the United States District Court shall have original but not

exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11. Section 1334 also provides that the United States District Court in which a case under Title 11 is commenced or pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of the case, and the property of the estate.

The United States Supreme Court in Heiser v. Woodruff, 327 U.S. 726 (1946) at 736, stated, "Undoubtedly, since the Bankruptcy Act authorizes a proof of claim based on a judgment, such proof of claim may be assailed in the bankruptcy court on the ground that the purported judgment is not a judgment because of want of jurisdiction of the court which rendered it over the persons or the parties or the subject matter of the suit, or because it was procured by fraud of a party." The Supreme Court of the State of Utah in Brimhall v. Mecham, 494 F.2d

525 (1972) stated that a judgment is void if the court which rendered it lacked jurisdiction of the subject matter.

The State District Court in the case at bar did not have any jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1334, and therefore pursuant to the ruling of the Supreme Court of the United States and the Supreme Court of the State of Utah, the judgment in the case at bar entered on February 24, 1986, is void and the State District Court should so order.

RESPECTFULLY SUBMITTED this 22nd day of January, 1991.

S/S

RICHARD CALDER, Pro Se

DEC 26 1991

No. 91-835

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RICHARD CALDER, Petitioner

v.

RETA JOB, Respondent

PETITION FOR WRIT OF CERTIORARI to the
SUPREME COURT OF THE STATE OF UTAH

BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did 28 U.S.C.A. § 1334(b), which grants federal district courts "original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11," divest the state trial court of subject matter jurisdiction over Reta and Dennis Job's ("Jobs") state law tort claims against Petitioner Richard Calder ("Calder")?

2. Is the existence of concurrent subject matter jurisdiction under 28 U.S.C.A. § 1334(b) dependent upon a federal court's decision to abstain under 28 U.S.C.A. § 1334(c)?

3. Was the adjudication of the Jobs' legal malpractice and related state law tort disputes in state court an exercise of jurisdiction over property of Calder's bankruptcy estate under 28 U.S.C.A. § 1334(d)?

PARTIES TO THE PROCEEDING

In addition to petitioner Richard Calder and respondent Reta Job, Dennis Job was initially a party to the proceeding. Dennis Job, who was Reta Job's husband, was a co-plaintiff with Reta Job. Dennis Job died in February 1989. The probate estate of Dennis Job did not appear in the proceeding before the Utah Supreme Court. Reta Job is the personal representative of the probate estate of Dennis Job.

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CITATION TO OPINIONS BELOW

There were no written opinions, published or unpublished, in the case below. The relevant orders of the Utah Supreme Court and the Third District Court of Salt Lake County, State of Utah, are attached to Calder's Petition as Appendices A and B, respectively.

RELEVANT STATUTES

28 U.S.C.A. § 1334 (Supp. 1991) is reproduced in Appendix B.

STATEMENT OF THE CASE

1. In October 1983, Dennis and Reta Job ("Jobs") filed a Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Utah. Calder, who was, prior to his disbarment by the Utah Supreme Court, a licensed attorney practicing in the area of bankruptcy law, represented the Jobs as debtors' counsel.

See Findings of Fact and Conclusions of Law dated February 24, 1986, attached

hereto as Appendix "A" ("App. A") 1-2,
Findings ("F.") ¶¶ 1 & 6.

2. The bankruptcy schedules signed by the Jobs disclosed a then-pending law-suit in which they were plaintiffs ("Pocklington Lawsuit"). However, the schedules Calder's office filed with the bankruptcy court did not list the Pocklington Lawsuit. App. A 3, F. ¶¶ 5 & 7.

3. On February 23, 1984, Calder filed a Chapter 13 bankruptcy case on behalf of himself in the United States Bankruptcy Court for the District of Utah, a case which was open until dismissed by the court in August 1986. Petition for Writ of Certiorari ("Petition") at 4.

4. In April 1984, the defendants in the Pocklington Lawsuit discovered that the Jobs' bankruptcy schedules did not disclose that lawsuit. The Pocklington

defendants, inferring fraud and perjury by the Jobs, moved to reopen the Jobs' Chapter 7 bankruptcy and requested a continuance of the scheduled trial in the Pocklington Lawsuit. App. A 4, F. ¶¶ 9-11.

5. Calder told the Jobs he would remedy the problem of the incorrect schedules on file with the bankruptcy court. Instead of moving to amend the Jobs' bankruptcy statement of affairs and schedules, however, Calder filed a separate Chapter 13 case for the Jobs on April 27, 1984. App. A 5-6, F. ¶¶ 12-15.

6. Calder failed to inform the bankruptcy court or trustee that the omission of the Pocklington Lawsuit was his error, or to oppose the motion to reopen the case. App. A 6, F. ¶ 17.

7. On August 8, 1984, the bankruptcy court revoked the Jobs' bankruptcy

discharge in their Chapter 7 and dismissed the Jobs' Chapter 13 case as improperly filed. Calder withdrew as counsel over the objection of the Jobs two days prior to the August 8th hearing. In September 1984, the Jobs lost their home to foreclosure. App. A 9-10, F. ¶¶ 26-32.

8. In the fall of 1984, the Jobs filed suit against Calder in the Third Judicial District Court for Salt Lake County (the trial court below) alleging state law causes of action for legal malpractice, libel and intentional infliction of emotional distress. Calder's Petition at 5-6. The automatic stay did not apply to the Jobs' lawsuit against Calder.^{1/}

^{1/} The Tenth Circuit Court of Appeals has ruled that the Jobs' lawsuit against Calder fell within an equitable exception to the automatic stay. In re Calder, 907 F.2d 953, 956 (10th Cir. 1990). The Jobs did not obtain relief from the automatic stay

9. In 1985, Calder filed a motion to reopen one of the Jobs' bankruptcies, falsely alleging tax evasion and bankruptcy fraud. App. A. 11-12 & 15, F. ¶¶ 35-36, Conclusion ("C.") ¶ 9.

10. In January 1986, the state trial court found Calder liable to the Jobs. The court entered judgment against Calder on February 24, 1986. See App. C to Calder's Petition. The court largely

Footnote continued from previous page.

because they did not know Calder was in bankruptcy. Calder's Petition at 6, Statement of Case ¶ 10. Calder raised the automatic stay issue in 1988 in an objection to the Jobs' proof of claim in a separate Chapter 7 bankruptcy Calder filed in August 1986. The Tenth Circuit held that Calder's inequitable conduct of litigating while failing to notify the Jobs or the Third District Court of Calder's 1984 Chapter 13 bankruptcy precludes Calder from invoking the automatic stay from his Chapter 13 with respect to the Jobs' claims or judgment. Id. at 956. Calder did not seek review of the Tenth Circuit's decision.

based the award of damages on Calder's failure to inform the bankruptcy court and trustee that the Jobs were not at fault for the erroneous schedules, filing a separate Chapter 13 for the Jobs instead amending the Chapter 7 schedules, withdrawing as counsel two days prior to a crucial hearing, and falsely accusing the Jobs' of tax and bankruptcy fraud, all of which occurred subsequent to February 23, 1984, the date Calder filed his Chapter 13 petition. See App. A 4-17, F. ¶¶ 10-40 & C. ¶¶ 6-14.

11. Calder first notified the state court and the Jobs of his pending Chapter 13 bankruptcy on February 5, 1986.^{2/}

^{2/} Calder's statement that he delayed notifying the Jobs or the state court of his bankruptcy because he believed the claims were post-petition (Calder's Petition at 7) contradicts Calder's previous explanation. In his unsuccessful challenge to the

12. The Jobs filed a proof of claim in Calder's Chapter 13 bankruptcy in May 1986, three months after entry of the judgment. See App. G to Calder's Petition.

13. Calder first challenged the subject matter jurisdiction of the state trial court by motion filed in January 1991. Calder appealed the trial court's denial of his motion to the Utah Supreme Court, filing a motion for summary disposition of the appeal. Job filed a cross-motion for summary dismissal. The Utah Supreme Court granted Job's motion to summarily dismiss the appeal "on the basis that the grounds for review are so insubstantial as to not merit further

Footnote continued from previous page.

validity of the Jobs' judgment based upon the automatic stay, "Calder's only explanation" for the delay was "that he forgot." In re Calder, 907 F.2d 953, 956 (10th Cir. 1990).

proceedings and consideration by this court." Order of Utah Supreme Court dated June 13, 1991, attached to Calder's Petition as App. "A."

SUMMARY OF ARGUMENT

The simple and straightforward issues presented by Calder's petition do not present substantial federal questions that warrant review by this Court. The plain language of the applicable bankruptcy jurisdictional statute supports the decision of the state district court which was affirmed by the Utah Supreme Court on the ground Calder's appeal did not merit its consideration. 28 U.S.C.A. § 1334(b) (Supp. 1991) ("Section 1334(b)") expressly makes federal jurisdiction over claims "related to" a bankruptcy "not exclusive." The non-exclusivity of federal jurisdiction under Section 1334(b) is not

dependent on a federal court deciding to abstain under Section 1334(c).

The state court resolved a state law dispute. It did not allow a claim for purposes of Calder's bankruptcy. Further, the judgment was based primarily upon tortious post-petition conduct of Calder.

The Jobs' filing of a proof of claim after entry of the state court judgment did not retroactively submit the state law dispute to the exclusive jurisdiction of the bankruptcy court. Finally, the Jobs' state law tort claims were not in rem proceedings in which the state court exercised jurisdiction over any property of Calder's bankruptcy estate under Section 1334(d). No prior decision of this Court or a United States court of appeals conflicts with the decision of the Utah Supreme Court to refuse to consider

Calder's appeal on the grounds it was totally without merit.

ARGUMENT

I. THE ISSUES RAISED BY CALDER'S PETITION DO NOT WARRANT REVIEW BY THE COURT.

There are no "special and important reasons" to grant Calder's petition for certiorari. See Sup. Ct. R. 10.1. The Utah Supreme Court decision Calder asks this Court to review is not a written opinion, but a one sentence order by the clerk dismissing Calder's appeal as "so insubstantial as to not merit further proceedings and consideration by this court." Where the federal question raised in a petition for review is based upon a mistaken assumption or is clearly without merit, there is no basis for this Court to review the state court decision. See Parker v. McLain, 237 U.S. 469 (1915). The language of 28 U.S.C.A. § 1334(b)

expresses a clear congressional intent that federal courts do not have exclusive jurisdiction over matters "related to" bankruptcy cases. Calder's petition mistakenly assumes that the "original" language of Section 1334(b) divests other courts of concurrent jurisdiction of matters related to a bankruptcy. Calder also mistakenly assumes that the Jobs' claim against him involved property of his bankruptcy estate. Given the mistaken assumptions of Calder, the Utah Supreme Court's summary dismissal, apparently based upon the clear statutory language of Section 1334, does not present a federal question warranting review by this Court.

Further, the unusual backdrop of this case regarding the automatic stay would limit the precedential value of any decision by this Court. In essentially all bankruptcy cases, the automatic stay would

prevent the exercise of concurrent jurisdiction by a state court over related state law claims unless the plaintiffs had sought and obtained relief from stay from the bankruptcy court. In the instant case, the automatic stay did not apply to invalidate the Jobs' state court judgment because of Calder's inequitable conduct of failing to notify the Jobs and the state court of his bankruptcy after the state court had found Calder liable at trial.

In re Calder, 907 F.2d 953, 956 (10th Cir. 1990).^{3/} A decision of this Court would therefore be precedent only in extremely limited circumstances.

3/ Calder's petition states that the Jobs did not seek relief from the automatic stay to try their action in state court, improperly implying a violation of Section 362. Calder's Petition at 61. Calder ignores the Tenth Circuit's ruling that the automatic stay did not apply.

II. THE JOBS' MALPRACTICE CLAIM WAS A RELATED PROCEEDING UNDER 28 U.S.C.A. § 1334(b) OVER WHICH THE STATE COURT HAD CONCURRENT SUBJECT MATTER JURISDICTION.

The statute governing bankruptcy jurisdiction expressly makes federal court jurisdiction over matters related to bankruptcy cases non-exclusive. 28 U.S.C.A. § 1334(b) (Supp. 1991) ("Section 1334(b)") provides:

[T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. (emphasis added)

The Jobs' state law tort dispute was "related to" Calder's bankruptcy because the "outcome . . . could conceivably have an effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984) (interpreting former codification of Section 1334(b)); In re Gardner, 913 F.2d 1515,

1518 (10th Cir. 1990). Calder acknowledges this point in his Petition at 37-48.

By making federal jurisdiction over disputes "related to" bankruptcy cases "not exclusive", Congress made it clear that state courts retain concurrent subject matter jurisdiction over proceedings such as the Jobs' state law legal malpractice and related tort disputes against Calder.^{4/} As stated in In re Bellucci, 119 B.R. 763 (Bankr. E.D. Cal. 1990):

"Jurisdiction over an underlying state law

^{4/} The express language of Section 1334(b) that federal district court jurisdiction over "related" proceedings is not exclusive and directly contrasts with the language in Sub-section (a) governing jurisdiction over actual bankruptcy cases:

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

28 U.S.C. § 1334(a) (Supp. 1991) (emphasis added).

dispute is concurrent in the state and federal courts." Id. at 777. See also Brock v. Morysville Body Works, Inc., 829 F.2d 383, 385-386 (3rd Cir. 1987) (Section 1334(b) grants district court overseeing bankruptcy concurrent jurisdiction over related claims, does not divest jurisdiction from other courts); Bill Walker & Associates, Inc. v. Parrish, 770 S.W.2d 764, 768 (Tenn. App. 1989); state court has jurisdiction under Section 1334(b) to adjudicate related state law dispute); Fitzgerald v. Critchfield, 744 P.2d 301, 304 n.1 (Utah Ct. App. 1987) (Section 1334 "did not withdraw from the state courts subject matter jurisdiction over any suit involving a bankruptcy debtor").

The automatic stay of 11 U.S.C.A. § 362 typically stays any state court exercise of concurrent subject matter jurisdiction over related state law disputes.

Section 362 does not, however, "deprive the state court jurisdiction over the matter." In re Clowser, 39 B.R. 883, 884 (Bankr. E.D. Va. 1984). The state court below was free to exercise its concurrent jurisdiction because the automatic stay did not apply to the Jobs' action.^{5/}

Calder attempts to avoid application of the plain language of Section 1334(b) by focusing on the grant of "original jurisdiction" and ignoring Congress' statement that such jurisdiction is "not exclusive." "Original jurisdiction in federal court does not mean exclusive jurisdiction" DiAntonio v. Pennsylvania State University, 455 F. Supp. 510, 512 (M.D. Pa. 1978). Original jurisdiction means the authority to adjudicate a case or controversy in the first

^{5/} See In re Calder, supra, 907 F.2d at 956.

instance, as opposed to appellate jurisdiction. State v. Johnson, 100 Utah 316, 114 P.2d 1034, 1037 (1941). State courts retain concurrent jurisdiction when a federal statute provides federal courts with original jurisdiction, but does not expressly make the grant of jurisdiction exclusive. See Plaquemines Tropical Fruit Co. v. Henderson, 170 U.S. 511, 517-519 (1898).

Calder argues that the original federal jurisdiction under Section 1334(b) must be "divested" by a federal court abstaining before a state court has subject matter jurisdiction. Petition at 17. Nothing in Section 1334(b) suggests that a state court is stripped of concurrent jurisdiction unless and until a federal court decides to abstain. Abstention is a decision of a federal court not to exercise jurisdiction it possesses over a

particular dispute because another court has jurisdiction. Abstention does not create jurisdiction in another court, but follows from it under appropriate circumstances.

In the instant case, the federal courts had "original but not exclusive jurisdiction" over the state law legal malpractice and related tort disputes by reason of Calder's bankruptcy. The state trial court retained concurrent subject matter jurisdiction over the state law tort claims against Calder.

III. THE MALPRACTICE LITIGATION AGAINST CALDER WAS NOT A "CORE" CLAIMS ALLOWANCE PROCEEDING.

Calder argues extensively that adjudicating the Jobs' legal malpractice and related tort causes of action was a "core" matter under 28 U.S.C.A. § 157 (Supp. 1991) over which the bankruptcy court had exclusive jurisdiction. (See Petition at

18-37.) Calder's focus on "core" versus "non-core" confuses the jurisdictional analysis. The extent of federal jurisdiction over bankruptcy cases and related proceedings is defined by 28 U.S.C.A. § 1334. If there is federal jurisdiction under Section 1334, 28 U.S.C.A. § 157 then applies to determine whether a district court may decide the matter, or whether the matter is a "core" proceeding for which the bankruptcy court may make a final adjudication. In re Majestic Energy Corp., 835 F.2d 87, 90 (5th Cir. 1988). See also In re Aaronics Equipment Rentals & Sales, Inc., 56 B.R. 297, 298 (Bankr. M.D. La. 1985). Although Calder does not characterize it as such, the argument that the bankruptcy court had exclusive jurisdiction to adjudicate the Jobs' tort action is in essence an argument that the Jobs' state court lawsuit fell under the

exclusive jurisdiction provision of 28 U.S.C.A. § 1334(a), rather the "original but not exclusive jurisdiction" language of Section 1334(b).

Calder's argument that the bankruptcy court had exclusive jurisdiction appears to be premised on a mistaken assumption that the state court "allowed" a claim of the Jobs in Calder's bankruptcy. Entry of a judgment in a related proceeding against a debtor does not preempt the authority of a bankruptcy court to determine the allowability of a claim against the bankruptcy estate. See In re Comstock Financial Services, Inc., 111 B.R. 849, 859 (Bankr. C.D. Cal. 1990). See also In re Bellucci, 119 B.R. 763, 769-771 (Bankr. E.D. Cal. 1990) (staying objection to bankruptcy claim based on state court judgment until resolution of state court appeal). In the instant case, the state

court liquidated the amount of damages suffered by the Jobs. The state court did not allow a claim against the bankruptcy estate under 11 U.S.C.A. § 502 (1979 & Supp. 1991). That remained the exclusive province of the federal courts pursuant to 28 U.S.C.A. § 1334(a).

The distinction between adjudicating an underlying dispute and allowing a bankruptcy claim was illustrated in a subsequent bankruptcy of Calder with respect to a claim based upon the very judgment Calder is now challenging. After the bankruptcy court dismissed Calder's 1984 Chapter 13 case, Calder filed a separate Chapter 7 bankruptcy in 1986. Calder objected to the proof of claim the Jobs filed in that proceeding based upon the state court judgment. See In re Calder, supra, 907 F.2d at 955. The bankruptcy court entered an order allowing the claim

of Dennis Job, but denied Reta Job's claim against the estate because she had not signed the proof of claim.

The state trial court did not "allow" a claim against Calder's bankruptcy estate. The trial court decided a state law dispute. The bankruptcy court retained authority to allow or disallow the Jobs' claim against Calder's bankruptcy estate.

IV. THE JOBS' ACTION AGAINST CALDER INVOLVED POST-PETITION CLAIMS.

Calder's argument that the Jobs' lawsuit against him involved the allowance of a prepetition claim over which the bankruptcy court had exclusive jurisdiction also fails because the state court judgment was based primarily on post-petition conduct of Calder. The bulk of Calder's tortious conduct upon which the state court based its award of damages,

including the intentional torts, occurred after February 23, 1984, the date Calder filed his Chapter 13 petition. (Failing to amend the schedules, improperly filing a Chapter 13 for the Jobs, failing to attend hearings, withdrawing as counsel and falsely accusing the Jobs of tax and bankruptcy fraud). App. A 4-17, F. ¶¶ 10-40, C. ¶¶ 6-14.

The Jobs' claims against Calder based upon post-petition tortious conduct were not allowable against Calder's Chapter 13 estate. See 11 U.S.C.A. § 1305(a)(1979) (only tax and certain consumer debts are allowable post-petition claims under Chapter 13). Therefore, even if Calder were correct in arguing that liquidation of a state law dispute in state court "allows" a claim against a bankruptcy estate under 11 U.S.C.A. § 502, Calder's argument that the state court

lacked subject matter jurisdiction would fail. Post-petition tortious conduct is not a basis for a claim against a Chapter 13 bankruptcy estate.

V. THE JOBS DID NOT CONSENT TO THE BANKRUPTCY COURT RESOLVING THE UNDERLYING DISPUTE.

Calder's argument that the Jobs consented to bankruptcy court jurisdiction to determine the dispute by filing a proof of claim ignores the timing of the proof of claim. The Jobs did not file a proof of claim in Calder's Chapter 13 proceeding until May 1986, months after the state court trial in January 1986 and the entry of judgment in February 1986. See App. C & G to Calder's Petition. Filing the proof of claim therefore could not have affected the jurisdiction of the state court to resolve the dispute at an earlier point in time.

VI. THE TRIAL COURT DID NOT EXERCISE JURISDICTION OVER PROPERTY OF CALDER'S BANKRUPTCY ESTATE.

The argument that adjudicating the Jobs' legal malpractice and related tort action was an exercise of jurisdiction over property of Calder's bankruptcy estate prohibited by 28 U.S.C.A. § 1334(d) (Supp. 1991) is patently without merit. The state court did not exercise in rem jurisdiction over property of any kind.

Delgado Oil Co., Inc. v. Torres, 785 F.2d 857 (10th Cir. 1986), cited by Calder in support of his argument, is not applicable to the instant case. In Delgado Oil, the Tenth Circuit Court of Appeals held that a preference cause of action against a director of a corporate debtor was property of the bankruptcy estate. The court found that the cause of action belonged to the bankruptcy estate because the action could only be asserted by the

corporation. Id. at 861-862. The legal malpractice and related causes of action in the instant case were property of the Jobs, not of Calder or his bankruptcy estate.

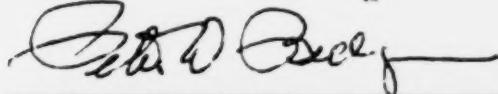
The numerous other decisions of courts of appeals involving in rem proceedings cited by Calder are inapplicable. There was no property of Calder's bankruptcy estate over which the state trial court asserted jurisdiction. This Court's decision of Kalb v. Feuerstein, 308 U.S. 433 (1940), is also inapposite because it too involved in rem jurisdiction, a foreclosure of property of the debtors or the bankruptcy estate.

CONCLUSION

The state court had subject matter jurisdiction over the Jobs' legal malpractice and related state law tort claims under the plain language of 28 U.S.C.A. §

1334(b). The decision of the Utah Supreme Court summarily dismissing for lack of merit Calder's appeal from the decision of the state trial court is in accord with the statute and relevant case law. The trial court had concurrent subject matter jurisdiction over the Jobs' state law legal malpractice and related tort claims. There are no special and important reasons warranting a writ of certiorari. The Court should deny Calder's petition.

DATED this 19 day of December
1991.



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APPENDIX "A"

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FILED IN CLERK'S OFFICE
Salt Lake County, Utah
Feb. 24, 1986
H. Dixon Hindley, Clerk
3rd Dist. Court

By /s/
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THIS MATTER having come before the Court on the 9th day of January, 1986, the Honorable Judge Frederick presiding, and having reviewed the file, the memoranda and exhibits, having heard the testimony

of parties, the witnesses and the evidence presented at trial, and the Court being otherwise fully advised, now enters the following:

FINDINGS OF FACT

1. In approximately October, 1983, Plaintiffs retained Defendant, an attorney licensed to practice law in the State of Utah, as their counsel to advise them regarding the filing of a Chapter 7 bankruptcy proceeding.
2. Defendant is a specialist in bankruptcy law, having testified he has filed some 6,000 bankruptcies.
3. Plaintiffs informed Defendant that Dennis Job owned stock and was a Plaintiff in a Federal District Court lawsuit, Job v. Pocklington, et al., C82-1085C, which involved, inter

alia, a contract dispute over Plaintiff Dennis Job's former employment.

4. Defendant made a note of said lawsuit in his working papers to be listed as an asset.
5. Plaintiffs signed schedules prepared by Defendant that included said lawsuit as an asset.
6. Plaintiffs' Chapter 7 bankruptcy was filed on October 13, 1983, No. 83C-02769.
7. Defendant and/or his employee personally filed the schedules with the Bankruptcy Court, but said schedules did not list the Federal District Court lawsuit or ownership of stock as assets.
8. The Bankruptcy Court entered an Order of Discharge on January 9, 1984, noting "the above matter has been closed as a 'no asset' case."

9. The Defendants in the Federal District Court lawsuit learned, after deposing Dennis Job, that Plaintiffs had filed the Chapter 7 bankruptcy, and upon checking the court files, that the lawsuit and ownership of stock were not listed as assets.
10. On or about the 13th day of April, 1984, said Defendants moved to reopen the Chapter 7 bankruptcy, inferentially alleging bankruptcy fraud and perjury for failure to list the assets.
11. Said Defendants also moved to continue the trial date in the Federal District Court which had been set for May 21-23, 1984, on grounds similar to those alleged in their Motion to Reopen, and that the lawsuit, upon reopening the Chapter 7, would be in the control of the Chapter 7 trustee.

12. Plaintiffs finally contacted Defendant, told him they were very upset over his failure to list the assets and the allegations of fraud and perjury brought against them, and asked him to oppose the Motion to Reopen, to which Defendant responded he would take care of it.
13. Defendant failed to take appropriate corrective action when it became known the omission occurred.
14. Defendant determined, rather than seeking to amend the Chapter 7 schedules, to file a Chapter 13 proceeding, for which Plaintiffs paid him an additional \$150, and which was filed April 27, 1984, No. 84A-01143.
15. Defendant's expert witness, Judith Boulden, the standing trustee for Chapter 13 bankruptcies, testified

this procedure was an improper use of the bankruptcy law.

16. Defendant omitted Plaintiffs' stock ownership as an asset in the Chapter 13 plan.
17. Defendant failed to oppose the motion to reopen or express to the Bankruptcy Court or Judith Boulden that the assets were revealed to him by the Plaintiffs or that the omission was his mistake.
18. Defendant admitted he did not think it was his duty to the Plaintiffs to acknowledge his mistake.
19. Defendant alleged in his Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment that Plaintiffs had stolen a key to his office and tampered with the schedules, or substituted schedules in the Bankruptcy Court's file.

20. On May 3, 1984, at a hearing in front of Judge Christensen, the Motion to Continue the Federal District Court lawsuit was provisionally granted with another hearing set for June 12, 1984, after the Bankruptcy Court decided on the Motion to Reopen the Chapter 7. Judge Christensen indicated he wished Defendant to attend the June 12 hearing.
21. On May 15, 1984, Defendant stated during the hearing on the Motion to Reopen: "Well, we don't oppose reopening the case", and the Motion was granted.
22. On June 12, 1984, the Motion to Continue the Federal District Court lawsuit was granted without a new date set, and Plaintiffs' attorney in said lawsuit, Dennis Olsen, moved to withdraw on the grounds, inter alia, that

the lawsuit was not in control of the Chapter 7 trustee, which motion was granted.

23. Plaintiffs expended \$3,600 in costs and fees in preparing their Federal District Court lawsuit for trial.
24. Defendant failed to attend the June 12 hearing.
25. Plaintiffs and Defendant had a meeting during which Plaintiffs expressed their loss of faith in the representation of Defendant, that they feared being subjected to bankruptcy fraud and perjury again for failure to list stock ownership in the Chapter 13 plan, and the effect Standing Order #19 had regarding dismissal. As a result of these discussions, Plaintiffs did not attend the creditors meeting for their Chapter 13 bankruptcy.

26. On June 26, 1984, the standing Trustee for the Chapter 13 bankruptcy moved to dismiss Plaintiffs' Chapter 13 with prejudice, or in the alternative, to reconvert to a Chapter 7.
27. Defendant told Plaintiffs he would handle the Trustee's Motion.
28. On July 3, 1984, Defendant moved to withdraw as Counsel for Plaintiffs. Defendant did not state in his motion that Plaintiffs owed him any money, and Defendant has not sent Plaintiffs a bill.
29. On August 6, 1984, over Plaintiffs' objection, the Motion to Withdraw was granted, just two (2) days prior to the hearing on the Trustee's motion.
30. On August 8, 1984, a hearing was held on the Trustee's motion, and the court ordered the discharge previously granted under the Chapter 7

would be revoked, and the Chapter 13 would be dismissed without prejudice.

31. Plaintiffs were unable to afford new bankruptcy counsel; and on September 18, 1984, they filed a Chapter 11 bankruptcy pro se, in an attempt to prevent foreclosure proceedings which had commenced on their home.
32. Plaintiffs were 33 minutes late in filing the Chapter 11, a motion was brought to terminate the automatic stay, which motion was granted, and they lost their home in which they had lived for 24 years and had equity in the amount of \$12,574.
33. Due to the emotional distress caused by the foul up in their bankruptcies, the allegations of fraud and perjury brought against them, the delay of and new defenses in their Federal District Court lawsuit, and the loss

of their home, Plaintiffs' daughter was obligated to move in with her sister, and subsequently Plaintiffs were separated for over three (3) months.

34. On or about December 7, 1984, Plaintiffs settled their Federal District Court lawsuit for \$15,000 and an assignment of rights, if any, that the Defendants in said lawsuit may have had in \$40,000 deposited with the Bankruptcy Court, pursuant to a plan of reorganization of the Great Northern Baseball Corporation.
35. On July 16, 1985, just six (6) days after Plaintiffs moved for summary judgment in this matter, Defendant moved to reopen Plaintiffs' Chapter 11 bankruptcy.
36. Defendant alleged, inter alia, in his Motion to Reopen, that he was a

creditor of Plaintiffs and that Plaintiffs had committed bankruptcy fraud and income tax evasion for failure to report \$30,000 worth of income.

37. Defendant mailed his Motion to Reopen to all creditors of Plaintiffs and to the Internal Revenue Service.
38. Defendant's Motion to Reopen was summarily denied by the Bankruptcy Court.
39. During Defendant's direct examination, it became apparent he had misinterpreted "the year before" on line 2.D. of Plaintiffs' Statement of Affairs concerning income, as the year 1982, not 1981 to which it referred.
40. The Federal District Court lawsuit was worth \$100,000, but the value was diminished by 60% by reason of the

fact that Plaintiffs' attorney, John McDonald, was told by the attorney for the Defendants in said lawsuit that they were preparing a defense to attack the credibility of Dennis Job based upon his alleged failure to list the lawsuit in the Chapter 7 bankruptcy.

CONCLUSIONS OF LAW

1. Defendant's conduct represented legal malpractice in several particulars which caused the Plaintiffs direct damage.
2. Defendant's conduct was intentional, malicious, without cause or basis in fact, and in reckless [sic] disregard of the Plaintiffs' rights.
3. Defendant's conduct represented an egregious violation of his legal and

ethical obligations to the
Plaintiffs.

4. An attorney employed to prepare a written instrument is liable for any losses sustained by his client as a result of the negligent preparation of such writing.
5. Defendant was negligent in omitting assets in the schedules filed with the bankruptcy court.
6. Defendant was negligent in failing to take appropriate corrective action when it became known the omissions of assets occurred.
7. Defendant was negligent in failing to express to the Bankruptcy Court or to the standing trustee that the omission was his mistake.
8. Defendant's conduct in withdrawing as counsel was intentional and in

wreckless [sic] disregard of the rights of Plaintiffs.

9. Defendant's conduct in filing a motion to reopen Plaintiffs' Chapter 11 bankruptcy was intentional, malicious, and in wreckless [sic] disregard of the rights of Plaintiffs; Defendant's allegations were without any authority or basis in fact; and it was no coincidence that Defendant filed said motion just six (6) days after Plaintiffs filed their motion for partial summary judgment.
10. Plaintiffs were damaged and Defendant is liable for diminution in value of the lawsuit calculated as follows: \$100,000 less \$55,000 received for a net of \$45,000, diminution of which 60% was attributable to the conduct of Defendant, which sum equals \$27,000 minus \$9,000 that would have

been paid from the recovery, leaving a net of \$18,000.

11. Plaintiffs were damaged and Defendant is liable for \$240 fees and costs for the Chapter 7 proceeding, \$150 fees and costs for the Chapter 13 proceeding, and \$3,600 fees and costs for preparing the Federal District Court lawsuit for trial.
12. Plaintiffs were damaged and Defendant is liable for \$12,574 representing Plaintiffs' equity in their former home.
13. Plaintiffs were damaged and Defendant is liable for \$10,000 general damages for emotional distress and suffering inflicted by thereckless [sic] and/or intentional conduct of the Defendant.
14. Defendant is liable for \$10,000 punitive damages for his malicious and

intentional conduct, and is liable for a total award of damages in the amount of \$54,564.

DATED this 24th day of February,
1986.

/s/ Peter H. Waldo
PETER H. WALDO, Attorney
for Plaintiffs

BY THE COURT:

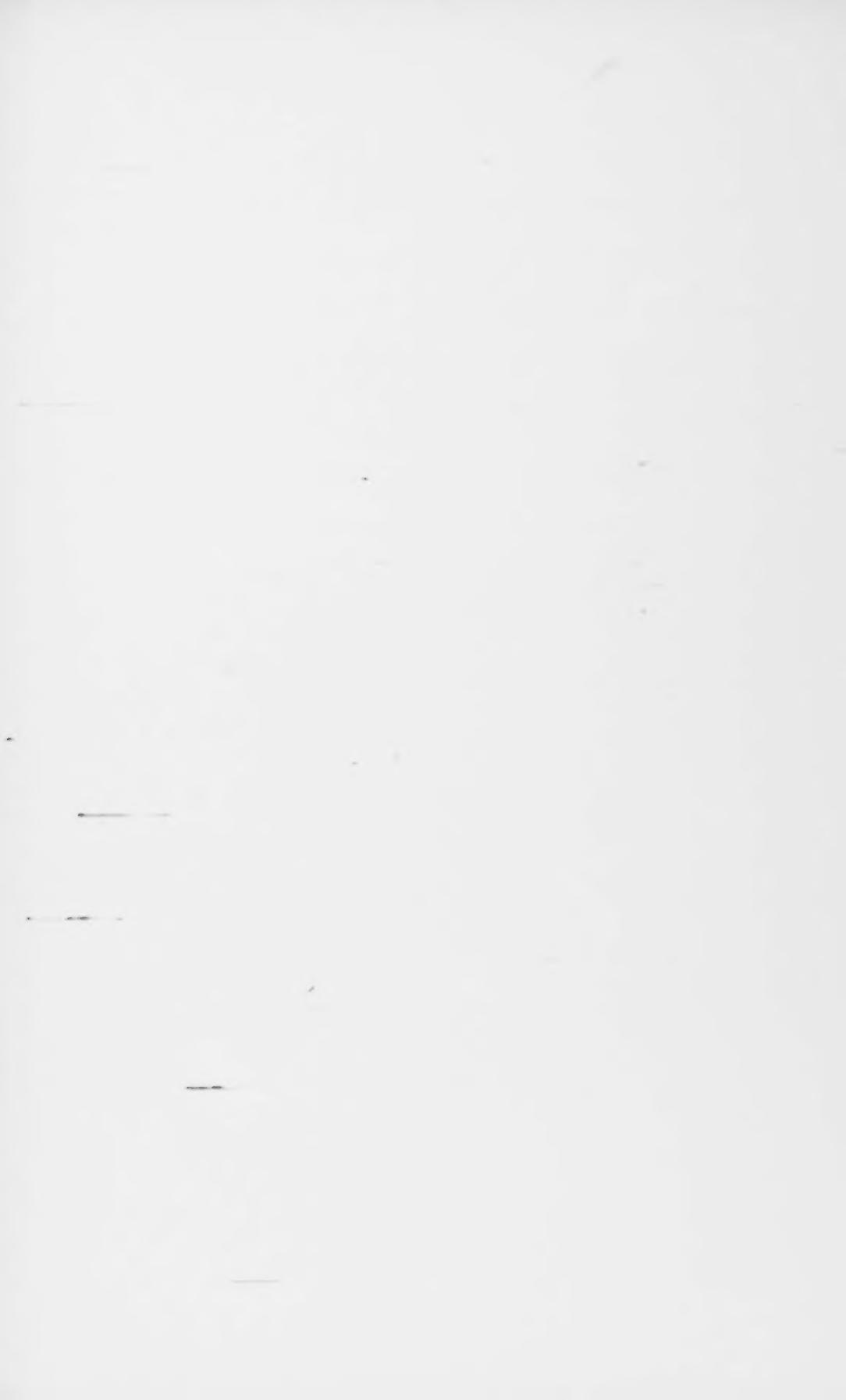
/s/ J. Dennis Frederick
JUDGE FREDERICK

Approved as to form:

DANIEL BOONE, Attorney for
Defendants

ATTEST
H. DIXON
HINDLEY,
Clerk
By /s/
Deputy Clerk

DJP:121091B



APPENDIX "B"



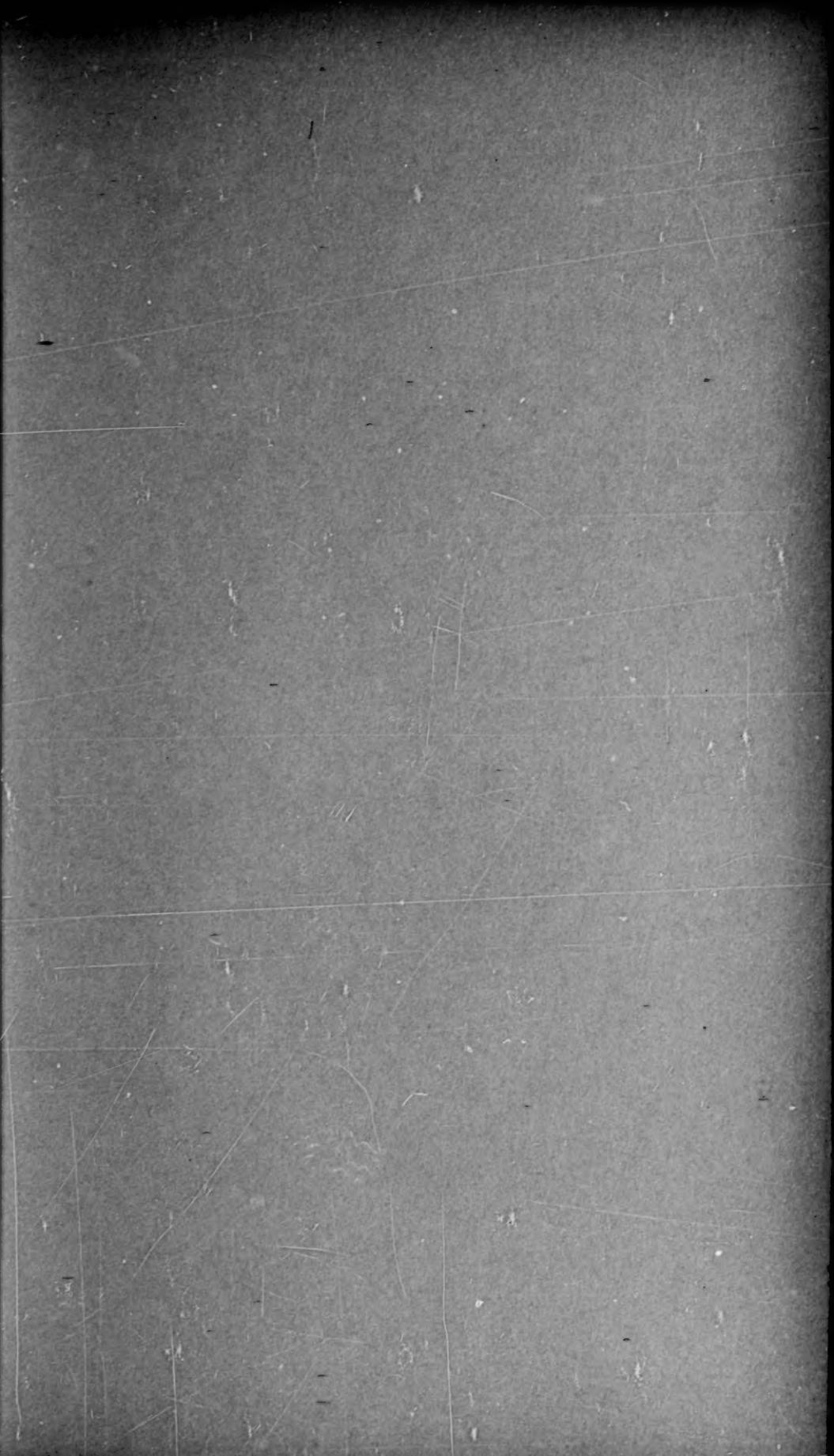
28 U.S.C. § 1334.

BANKRUPTCY CASES AND PROCEEDINGS

- (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
- (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
- (c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
- (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain or not to abstain made under this subsection

is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

- (d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.



6
No. 91-835

Supreme Court, U.S.
FILED
JAN 15 1992
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

RICHARD CALDER, Petitioner

v.

RETA JOB, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF UTAH

REPLY BRIEF

Richard Calder, Pro Se
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78-22-1

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I. RESPONDENT ERRONEOUSLY USES NON-BANKRUPTCY CASES TO INTERPRET THE MEANING OF 28 U.S.C. SECTION 1334.

DiAntonio v. Pennsylvania State University. 455 F.Supp. 510 (M.D. Pa. 1978) involved a suit filed in 1977 before the Bankr. Reform Act was enacted. An employee alleged violations arising under Civil Rights Act 42 U.S.C. Sect. 1983 and Sect. 1985. The issue was in which court, federal or state, should the alleged civil rights violations be litigated. The cite of Resp. at p. 16 relates to the fact that concurrent jurisdiction over actions arising under 42 U.S.C. Sect. 1983 exists in both the state and federal courts. This clearly is not pertinent to the meaning of 28 U.S.C. Section 1334.

State v. Johnson, 100 Utah 366, 114 P.2d 1034 (1941) involved a prosecution alleging an alteration of a brand on a cow. The question of the proper court to so prosecute involved the meaning of "original" in

Art. VIII Sect. 7 of the Ut. State Const. The proper state court to prosecute hasn't anything to do with the meaning of 28 U.S.C. Sect. 1334.

Plaquemines Tropical Fruit Co. v. Henderson, 170 U.S. 511 (1898) is not relevant because the court interprets Art. III Sect. I of the Const. of the U.S. in holding that the mere extension of the judicial power of the U.S. to suits by a state against citizens of other states does not of itself divest the state courts to hear and determine such cases unless Congress has invested the federal courts with exclusive jurisdiction in such cases. The Bankr. Reform Act of 1978 through 28 U.S.C. Sect. 1334(a) gave the bankruptcy court originally exclusive jurisdiction to handle any matter which was related to or in any way connected with a bankruptcy case.

II. THE JOB STATE COURT JUDGMENT WAS BASED EXCLUSIVELY ON CONDUCT OF CALDER THAT OCCURRED PRIOR TO FEB. 23, 1984--THE DATE THE CALDER CHAPTER 13 WAS FILED.

It is impossible to take seriously the

claim of Pt. IV of Resp. at p. 22 that Job's claims against Calder involved primarily acts of Calder after he filed his Ch. 13 on Feb. 23, 1984.

The judgment is analyzed as follows (A-15 to A-17 Resp. Brief):

(a) Diminuation in value of Pocklington suit. This was because of failure of Calder to list suit as an asset in 1983 Job Ch. 7 Bankr.	\$18,000.00
(b) (1) Costs of federal suit All incurred in 1983	\$ 3,600.00
(b) (2) Bankr. costs. Proximate- mately caused by 1983 acts of Calder	\$ 990.00
(c) Loss of equity in Job home. Caused ultimately because of asset omission in Job 1983 Ch. 7 bankr.	\$12,574.00
(d) Reckless conduct in 1983 of Calder. He failed to list asset in Job Ch. 7	\$10,000.00
(e) Malicious conduct of Calder. He failed to rectify 1983 omission of asset	\$10,000.00
Total amount of Job judgment against Calder	\$54,564.00

Each of the above components of the judgment was ultimately traceable to and proximately caused by the omission by Calder of the Pocklington suit from Jobs' Ch. 7 bankr. This conduct of Calder in 1983 was prior to the filing date of the Calder 1984 Ch. 13.

Job filed a proof of claim in Calder's Ch. 13 claiming the \$54,564.00 owed to Job existed as of Feb. 23, 1984, the filing date of Calder's Ch. 13 case.

III. THE TRIAL COURT DID EXERCISE JURISDICTION OVER PROPERTY OF THE ESTATE IN CALDER'S 1984 CHAPTER 13.

It is impossible to take seriously the claim of Resp. that the judgment entered in the Dist. Ct. of Salt Lake County (A-1 Resp. Brief) on Feb. 24, 1986 (A-1 Resp. Brief) was not an exercise of jurisdiction over the real property of Calder located in Salt Lake County, his home.

U.C.A. 78-22-1 (App. A Reply Brief) states that a judgment in the district court (in this

case Salt Lake County) becomes a lien when docketed upon all the real property of the judgment debtor in the county in which the judgment is entered--the Calder home is located in Salt Lake County. Obviously, docketing the Job state court judgment in 1986 automatically creates a lien on real property of the 1984 Calder Ch. 13 estate and is therefore an exercise of jurisdiction by a state court over property (home) of the Calder Ch. 13 1984 bankr. estate.

A judgment docketed in another county in the state creates a lien on property of the debtor in that county. (App. A Reply Brief.) If the Ut. state court was not exercising in rem jurisdiction over property of the Calder Ch. 13 bankr. estate in Utah county, then what was the purpose of Job and his attorney in docketing the Job judgment in Utah county on March 14, 1986 (App. B Reply Brief)? Obviously, the purpose was to exercise control over real property of the Calder Ch. 13 estate located in Utah county.

It is very clear that the Utah state trial court in 1986 was as to pre-petition claims of Job exercising jurisdiction over real property of Calder's 1984 Ch. 13 bankruptcy estate (his home and real property in Ut. county) and it is sad that counsel either through ignorance or malicious design misleads the nation's highest court.

IV. THERE ARE SERIOUS FACTUAL ERRORS IN THE BRIEF OF RESPONDENT.

A factual error that is indicative of the mistakes that seem to pervade the Brief of Resp. is the statement on p. 4 at Note 1 that "the Jobs did not obtain relief from the automatic stay because they did not know Calder was in bankruptcy." As proof for this statement, Resp. cites to petitioner's statement at para. 10 of p. 6 of his Petition which states that "the Jobs were not aware of the Ch. 13 filing until sometime in Feb. 1986, shortly prior to entry of the state court judgment against Calder." It is hard to think opposing counsel seriously believes that the

Jobs failed to utilize the automatic stay because "they did not know Calder was in bankruptcy." This is especially so when Resp. at p. 6 para. 11 of their Brief makes the statement that Job knew Calder was in a Chapter 13 as early as Feb. 5, 1984. The Job judgment was entered Feb. 24, 1986.

V. THE RAISING BY RESPONDENT OF THE ISSUE OF THE APPLICATION OF THE AUTOMATIC STAY TO THE JOB CLAIM IS NOT RELEVANT TO THE ISSUE OF THE MEANING OF THE LANGUAGE OF "ORIGINAL BUT NOT EXCLUSIVE" IN 28 U.S.C. SECTION 1334(b).

As to the Job claim against Calder, the question of the lifting of the automatic stay is a federal bankruptcy administration question which falls exclusively under the aegis of 11 U.S.C. Sect. 362. It does not involve the jurisdictional question posed by 28 U.S.C. Sect. 1334.

Whether the Jobs had a valid state court pre-petition cause of action against Calder is a state law tort question. The jurisdictional question as to which court--the state trial court or the federal bankruptcy court--

shall determine the underlying merits of this tort claim has nothing to do with 11 U.S.C. Sect. 362.

Justice Brennan in Northern Pipeline

Const. Co. v. Marathon Pipeline Co., 458 U.S. 50, 71, 73 L.Ed.2d 598, 102 S.Ct. 2858 (1981) writing for a plurality distinguished "the restructuring of debtor-creditor relations, which is the core of the federal bankruptcy power" from "the adjudication of state created private rights."

The raising by Resp. of the applicability of the automatic stay by Calder against the Job claim in the Calder bankr. is simply not relevant because the question involves 11 U.S.C. Sect. 362 and not 28 U.S.C. Sect. 1334.

The utter confusion of Resp. as to the separate nature of the Sect. 362 automatic stay question and the Sect. 1334 jurisdictional question is illustrated by counsel twisting the holding of In re Calder, 907 F.2d 953 (10th Cir. 1990) in order to somehow make

favorable use of this ruling. In In re Calder, supra, counsel erroneously states at p. 12 that the court held that "the automatic stay did not apply to invalidate the Jobs' state court judgment because of Calder's inequitable conduct of failing to notify the Jobs and the state court of his bankruptcy after the state court had found Calder liable at trial," (emphasis added). Attributing the lack of any notification by Calder as the conduct which was inequitable is simply wrong. What the Tenth Circuit held in In re Calder, supra, at 756 was that it would be inequitable to allow Calder protection under Sect. 362(a) because he "did not provide notice of the pending Chapter 13 proceeding until just before the state court was to enter final judgment."

The inequitable conduct was not the utter failure of Calder to notify the state court he was in bankruptcy but rather the inequity found by the Tenth Circuit was the belated nature of the actual Calder notification.

Counsel for Resp. improperly mixes the separate distinct question of the automatic stay and the separate distinct jurisdictional question as if these completely separate and distinct questions were simply different aspects of a single unitary question.

All the language of Resp. about the automatic stay should be ignored because the issue posed by Petitioner is not what does 11 U.S.C. Sect. 362 mean but instead the issue is what is the meaning of 28 U.S.C. Sect. 1334?

VI. THE DOCTRINE OF ABSTENTION PERMITS A FEDERAL COURT TO EXERCISE ITS DISCRETION TO RELINQUISH JURISDICTION.

Resp. erroneously defines the doctrine of abstention at p. 17 that "Abstention is a decision of a federal court not to exercise jurisdiction it possesses over a particular dispute because another court has jurisdiction," (emphasis added).

The correct doctrine of abstention as defined by the Supreme Ct. of the U.S. was summarized in Surowitz v. New York City Em-

ployees' Retirement System, 376 F.Supp. 369, 378 (D.C. S.D. N.Y. 1974), thus:

...the doctrine of abstention, which permits a federal court in the exercise of its discretion to relinquish jurisdiction (emphasis added) where necessary to avoid needless conflict with the administration by a state of its own affairs. Alabama Public Service Commission v. Southern Ry., 341 U.S. 341, 71 S.Ct. 762, 95 L.Ed. 1002 (1951); Burford v. Sun Oil Co., 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943); see C. Wright, Law of Federal Courts, Sect. 52, at 199-200 (2d ed. 1970).

Under 28 U.S.C. Sect. 1334(a), the bankruptcy court "shall have original and exclusive jurisdiction of all cases under Title 11." Collier on Bankruptcy at Vol. I, para. 3.01, p. 3-10, in discussing the differences between jurisdiction under the Bankr. Reform Act of 1978 and the 1898 Bankr. Act states that jurisdiction was to exist in the bankruptcy court "to hear any matter which was related to or in any way connected with the Title 11 case."

Collier on Bankruptcy, Vol. I, para. 3.01, at p. 3-22, states that the intent of Congress

was "to bring all bankruptcy-related litigation within the umbrella of the district court, at least as an initial matter... (emphasis added).

Resp. concedes at p. 13 that "the Jobs' state law tort dispute was 'related to' Calder's bankruptcy because the 'outcome ... could conceivably have an effect on the estate being administered in bankruptcy.'" By this statement, Resp. admits that the bankr. ct. originally had exclusive jurisdiction under 28 U.S.C. Sect. 1334(a) of the Calder Chapter 13 case which would obviously include original jurisdiction over the Job claim because it was a matter admitted by Resp. to be related to and connected with the Calder Ch. 13 bankr. case.

The flaw in the thinking of Resp. is for Resp. to falsely claim that the state trial court and the Bankr. court at the commencement of the Calder bankr. in 1984 each had concurrent jurisdiction of this pre-petition 1983 state law tort claim. This

position of Resp. is a direct negation of 28 U.S.C. Sect. 1334(a)--which is the basic essence of the Bankr. Reform Act of 1978.

Resp. statement at p. 14 that "state courts retain concurrent subject matter jurisdiction over proceedings such as the Jobs" is obviously false because of 28 U.S.C. Sect. 1334(a) and the federal abstention doctrine implemented at 28 U.S.C. Sect. 1334(c).

The peculiar facts of each of the bankruptcy cases cited by Resp. render them meaningless as to the instant case. The language cited by Resp. from these cases is only meaningful in a completely different context than the facts of the instant case.

In re Bellucci, 119 B.R. 763 (Bankr. E.D. Cal. 1990) involved a lengthy consideration by a bankr. court whether abstention was proper. The ct. decided to abstain and the language cited by Resp. at p. 14 has reference to the jurisdiction of the state court after abstention by the bankruptcy court.

Brock v. Marysville Body Works, Inc., 829 F.2d 383 (3d Cir. 1987) involved a jurisdictional question raised in the context of the OSHA jurisdictional provision of 29 U.S.C. Section 660 and a Chapter 11 case. A second federal jurisdictional statute makes this case not applicable.

Bill Walker & Associates v. Parrish, 770 S.W. 2d 764 (Tenn. App. 1989) involved a state claim against an officer of a corporation in a Ch. 11 in which the claim unlike the Job claim had absolutely no connection with the corporate Ch. 11.

In re Clowser, 39 B.R. 883 (Bankr. E.D. Va. 1984) involved the inherent power of a state court to punish an act of a Ch. 13 debtor committed pre-petition in contempt of a state court. Since there exists not any contempt of court matter in the instant case, therefore this case and the language are out of place.

Fitzgerald v. Critchfield, 744 P.2d 301 (Utah Ct. App. 1987) involved a post-petition

not a pre-petition claim and acts of a debtor not acts of a creditor. These two fundamental points of divergence makes it not relevant in deciding the Job-Calder problem of the correct court to originally exercise jurisdiction over a pre-petition claim of a creditor against a debtor.

CONCLUSION

The Resp. Brief in opposition is marred by pervasive and unrelenting error.

DATED this 13th day of January, 1992.

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Telephone: (801) 487-7044



APPENDIX A

Utah Code Annotated 78-22-1



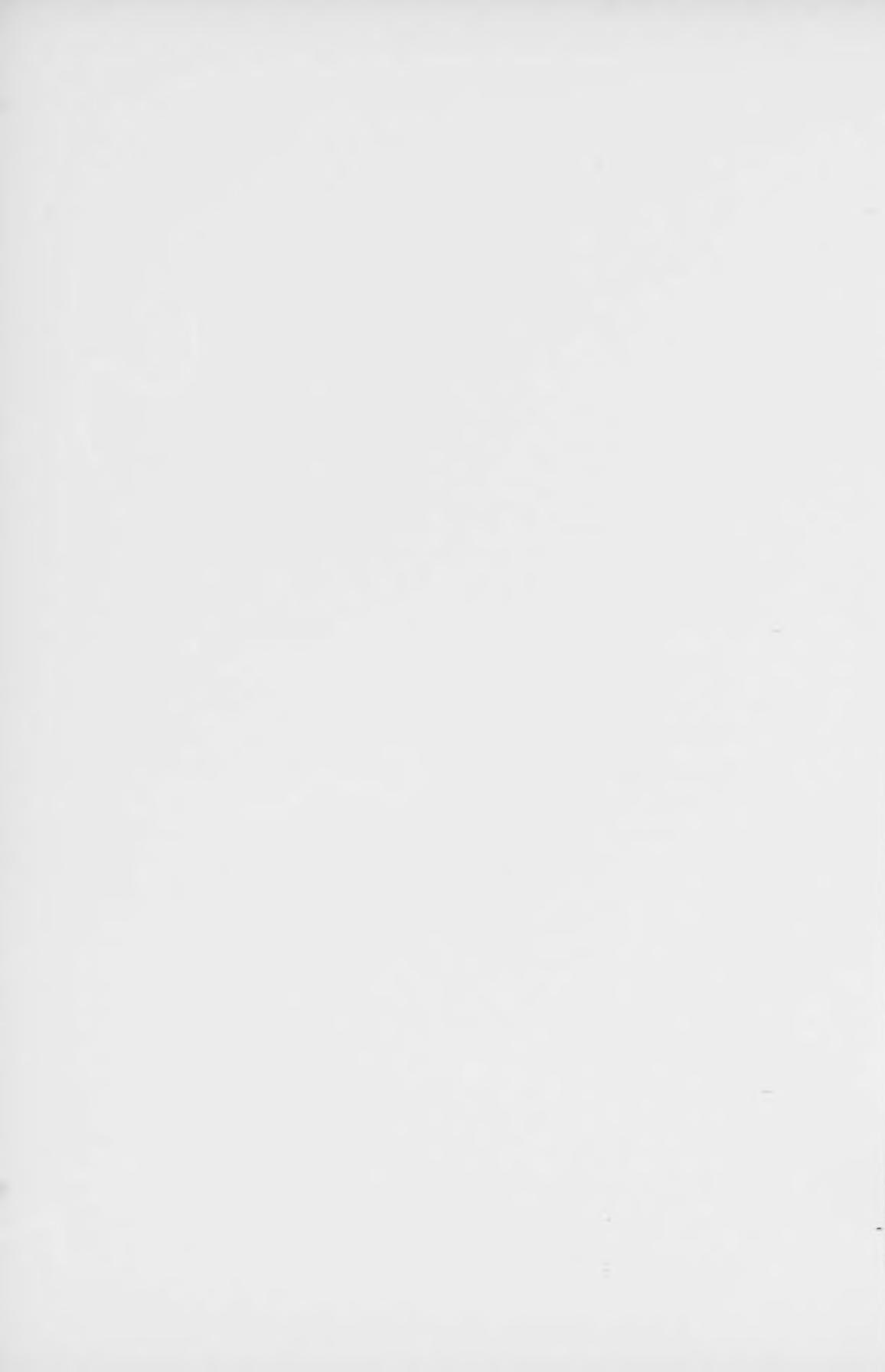
78-22-1: Lien of judgment.

From the time the judgment of the district court or circuit court is docketed and filed in the office of the clerk of the district court of the county it becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county in which the judgment is entered, owned by him at the time or by him thereafter acquired during the existence of said lien. A transcript of judgment rendered in a district court or circuit court of this state, in any county thereof, may be filed and docketed in the office of the clerk of the district court of any other county, and when so filed and docketed it shall have, for purposes of lien and enforcement, the same force and effect as a judgment entered in the district court in such county. The lien shall continue for eight years unless the judgment is previously satisfied or unless the enforcement of the judgment is stayed on appeal by the execution of a sufficient undertaking as pro-

vided by law, in which case the lien of the
judgment ceases.

APPENDIX B

Transcript of Judgment Docketed
with Clerk of Utah County
and Note from Job's Attorney



TRANSCRIPT OF JUDGMENT

<u>Judgment Debtors</u>	<u>Judgment Creditors</u>	<u>Judgment</u>	<u>Time of Entry</u>	<u>Where Entered in Judgment Book</u>
RICHARD CALDER	DENNIS R. JOB AND RETA JOB	\$54,564.00 Interest: Plus Interest thereon at rate of 12% per annum from the date of entry hereof	2/26/86 8:30 AM	BK. 204 NO. 3263

C-84-5436

DENNIS R. JOB AND RETA JOB

Plaintiff

Against

RICHARD CALDER

Defendant

CLERK'S OFFICE, DISTRICT COURT,
THIRD JUDICIAL DISTRICT

The State of Utah)
 : ss.
County of Salt Lake)

THIS IS TO CERTIFY, That the foregoing is a full, true and correct transcript of the entries in the above entitled action, as the same appear in the judgment docket kept at my office.

ATTEST my hand and Seal of said Court,
this 11th day of March, 1986

H. DIXON HINDLEY
Clerk

By Sophie P. Orvin
Deputy Clerk

FROM THE DESK OF PETER H. WALDO

TO: Utah County Clerk:

Enclosed please find a transcript of Judgment and \$10 check for filing. It is my understanding the transcript is treated the same as an abstract of judgment, and that it will create a judgment lien on any property the defendant might own in Utah County. If this is not true, please contact me immediately. My phone number is 364-1142. Thank you.

P. H. Waldo

\$4 in cash sent back--tm